VOLUME 5 | ISSUE 4

INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

UNIFORM CIVIL CODE IN UTTARAKHAND: A CRITICAL ANALYSIS OF FEASIBILITY AND IMPLICATIONS

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ABSTRACT

The Uniform Civil Code (UCC) as envisioned under Article 44 of the Constitution of India seeks to have a unified system of personal laws with the objective of ensuring equality and justice across the diverse societies of India. The Uttarakhand UCC is the first step taken at aState-level towards such obligation which has sparked debates around the nation regarding its constitutionality, inclusivity and social acceptance. The author seeks to examine this UCC from a critical lens to understand its legal framework, highlighting its positive intention towards aspects like prohibition of polygamy and child marriage as well as extracting the legal and social implications of certain provisions like mandatory registration of live-in relationships along with its strict procedural rules. The objective of the paper is also to identify the Code's potential conflicts with the Fundamental Rights and the Pluralistic ethos of the Country. The paper advocates for gradual and spontaneous shift towards the uniformity of personal laws highlighting the need of inclusivity promoting gender justice and equality while maintaining the importance of cultural diversity inherent in the nation as a whole. Lastly, the paper calls for a consensual and participatory approach towards implementing the UCC in the State and taking a cue to have a balance of equality and individual freedoms with the Constitutional ethos of diversity and secularism.

I. INTRODUCTION

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India is a diverse country where people from all religions and faith have equal rights as citizens under the Constitution of India. The Uniform Civil Code (hereinafter referred to as the 'UCC') in India has always been a point of debate and discussions on the question whether it should replace the existing system of personal laws for people from different religions. The debate revolves around the factors of national integration, modernity, secularism and gender equality. The proponents of UCC argues on the grounds of inequality and modernity by saying that the current system promotes inequality as there are different laws for people from different religions as well as for men and women and further says that UCC is the key to modernity in the prospect of India as a developed nation in the near future. On the other hand, the UCC is considered a threat by those people who have accepted legal pluralism as a reality and aim to achieve equality by the way of reforming personal laws.[3]

It is the obligation of the State to secure the UCC for all its citizens as per article 44 of the Constitution of India. The socio-legal and political discourse of India in recent times has made it the top topic revolving around the controversy regarding the enforcement of this constitutional obligation. This tussle between different groups had gained considerable highlight especially after the judgement of the Supreme Court in the *Shah Bano Case.*[4]A series of judgements followed where the apex court highlighted the need of having the UCC for the nation.[5] However, the Supreme Court has mostly refrained from directly engaging with the issue citing the lack of jurisdiction by stating that it is a matter that falls within the purview of the legislature. Recently, the discussion has again gained the momentum in light of the inviting of the public opinion by the Law Commission of India and the implementation of the UCC by the State of Uttarakhand, thus becoming the first State to have drafted and implemented the UCC in the country.

A *five*-member committee, led by former Supreme Court Judge Smt. Ranjana Prakash Desai was formed on 27th May, 2022 by the Uttarakhand Government to prepare a report on the implementation of UCC in the State on matters relating to marriage, divorce, property rights, guardianship, inheritance, maintenance and custody. The committee held extensive meetings

[3]Tanza Herklotz, "Dead Letters? The Uniform Civil Code through the Eyes of the India Women's Movement and the Indian Supreme Court", 49(2) *Verfassung und Recht in Übersee / Law and Politics in Africa, Asia and Latin America* 148-149 (2016).
[4]*Mohd. Ahmad Khan* v. *Shah Bano Begum,* AIR 1985 SC 945.
[5] Example: *Jorden Diengdeh* v. *S.S. Chopra,* AIR 1985 SC 935; *Smt. Sarla Mudgal* v. *Union of India,* AIR 1995 SC 1531. However, In *Ahmedabad Women Action Group* v. *Union of India,* (1997) 3 SCC 573, the court refused to entertain the writ petitions by observing that "it is an issue of state policy with which the court will not ordinarily have any concern".

and had discussions over all the aspects of implementing the UCC in the State. It had invited suggestions and opinions from the residents of the State, the government agencies, the Non-Governmental Organisations and even the various governments, political leaders and the religious leaders of various denominations. A total of over 20,000 stakeholders were consulted and over 2,30,000 written submissions were received by the expert committee.[6]The draft of the Code was tabled in the Legislature and passed with majority as the Uniform Civil Code, Uttarakhand, 2024.[7]

It is implemented with the objective of strengthening the secular fabric of the State, fostering equality and oneness, and fighting the discrimination and inequalities on the basis of religion in the society. The code mentions in its Preamble that it is an Act "To govern and regulate the laws relating to marriage and divorce, succession, live-in relationships and matters related thereto". This code contains extensive provisions having 392 sections and 7 schedules. The author, through this paper, aims to study the Code in its entirety and examine its feasibility and implications in light of the legal aspects concerning its implementation. The author seeks to deal with the provisions taking into account all the factors and opinions surrounding it which have been advocated from time to time both in its favour and against it. The ultimate objective of this paper is to identify the lacunae and shortfalls of the Code and propose the way forward so that the intention of the legislature to have an equitable society free from the discrimination and injustice can be fulfilled and prove to be a test case for fulfilling the constitutional obligation of article 44 throughout the country.

II. LEGAL RATIONALE BEHIND THE UCC

There are many provisions and principles in the legal system of India which justify the incorporation of UCC in a State or the country as a whole. These aspects can be discussed under the following heads:

1. Constitutional obligation is being fulfilled

Article 44 of the Constitution of India provided the obligation of the State to secure for all its citizens a UCC which is put under Part IV of the Constitution as a non-justiciable duty of the State. The objective of the provision was to have a uniform personal law fostering national

[6] Samaan Nagrik Sanhita, Uttarakhand 2024, *available at:* https://ucc.uk.gov.in/about-us (last visited on 05th May, 2025).
[7] Act No. 03 0f 2024.

consolidation separating religion from personal laws as well as the social relations. This would entail a national uniformity in the personal laws which was considered essential for the foundation of a secular, democratic and integrated India even by the founding fathers of the nation.

2. Equality Under Law being Ensured

There are certain personal laws which are biased against women. For Example, under the Muslim Personal Laws, women heirs get half the share of men in the property which perpetuate the gender-based discrimination against women.[8] UCC aims to foster equality between both men and women. Another example in this regard is under Christian Law where it is very difficult for women to get divorce, generally only on the strict grounds of adultery or cruelty.[9] UCC would provide equality among the genders under the progressive framework thereby fulfilling the mandate of article 14 of the Constitution of India.[10]

3. No Breach of the Right to Religious Freedom

There is this major argument against the implementation of the UCC that it violates the Right to Freedom of Religion guaranteed under article 25 of the Constitution of India.However, it has been reiterated time and again by the Supreme Court of India that there is no protection under article 25 that can be claimed when the fundamental rights are violated since article 25 provides the right subject to other provisions under part III of the Constitution.[11] Further, in the case of *John Vallamattom*v. *Union of India*[12], the Supreme Court held that article 25 protects only the right to practice those rituals and ceremonies which form the part of the essential religious practices or form the integral part of the religion.

III. KEY PROVISIONS OF THE CODE

Some of the key provisions of the Code can be discussed as follows:

1. Provisions regarding Marriage and Divorce

[8] D.F. Mulla, *Principles of Mahomedan Law* (LexisNexis, 24th ed. 2025).
[9]See s.10 of the Indian Divorce Act, 1869.
[10]Art. 14: "*Equality before law***:** The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India".
[11] Art. 25(1): "Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion".
[12](2003) 6 SCC 611.

Part I of the Code deals with the aspects of Marriage and Divorce under which chapter 1 and chapter 2 covers the provisions relating to 'Conditions for solemnising or contracting Marriage' and 'Registration of Marriage and Divorce' respectively. The Important provisions in this part are as follows:

A. *Conditions for the Marriage*

Section 4 of the Code provides the *Conditions for the Marriage* and lays down thata marriage may be solemnised/contracted between a man and woman if the following conditions are fulfilled:

1. *No existing spouse***:** Neither party should be already married at the time of the ceremony of marriage.
2. *Mental fitness:*They must be mentally capable of giving a valid consent. They should not be suffering from mental disorders that render them unfit for marriage or should not have been subject to frequent bouts of insanity.
3. *Age:* The man must be of a minimum of ***21 years*** of age and the woman should be of a minimum of ***18 years*** of age for them to be eligible to enter into the marriage with each other.
4. *Relationship Restrictions:*The parties cannot be within the prohibited degrees of relationship [13]unless the custom or usage ***governing any one of them*** allows for such a marriage. Further, such customs must not be against the public policy or morality.[14]
5. The Marriage must not be prohibited under any other existing law.

B. *Ceremonies for a Marriage*

Section 5deals with the *Ceremonies for a Marriage.* A Man and a Woman may choose their ceremonies of the Marriage based on their religious beliefs and customs which includes but not limited to the following:

[13]S. 3(1)(d): "Degrees of Prohibited Relationship: A Man and any of the persons mentioned in List 1 of the schedule 1 and a Woman and any of the persons mentioned in List 2 of the said Schedule are within the degrees of prohibited relationship". It broadly covers the close relatives between whom marriage is prohibited. Also See the Schedule 1 of the Code.

[14]See proviso to s. 4(iv) of the Code. The terms of Public Policy and Morality are subjective and can be interpreted in various ways.

1. Religious Ceremonies or Traditional rituals like "Saptapadi" (Hindu), "Ashirvad" (Hindu), "Nikah" (Muslim), "Holy Union" (Christian), and "Anand Karaj"[15] (Sikh).
2. Civil Ceremonies under existing laws like The Special Marriage Act, 1954 and Arya Marriage Validation Act, 1937.

It is to be noted that the above list of ceremonies is not exhaustive and the Code allows for other ceremonies as well. Further, the mentioning of the specific terminology of 'Man' and 'Woman' makes it clear that the Code does not allow for a valid marriage between parties of the same sex. The Special Marriage Act allows for the marriage between parties of different faiths or religions. Lastly, The Arya Marriage Validation Act, 1937 recognizes the marriages performed as per the Arya Samaj rituals.

C. *Registration of Marriage*

Chapter 2 of Part I deals with the aspects of Registration of Marriage and Divorce. It lays down different requirements for the registration depending upon the place where and the time when the marriage took place. Some important provisions are examined as follows:

1. *Marriage taking place after the implementation of the Code:* All such marriages irrespective of the place where the marriage took place has to be compulsorily registered within **60 days** of the completion of marriage if at least one party to the marriage resides within the State. For this, there is a need to submit a memorandum to the Sub-Registrar either electronically or physically.[16]
2. *Marriages between 26th March, 2010 and the implementation of the Code:* All such marriages are required to be registered if either of the parties is the resident of the State. It is required to be registered within 6 months of the coming into force of the Code by submitting the memorandum to the Sub-Registrar by either or both parties. The exemption exists in favour of those whose marriage is already registered under the **Uttarakhand Compulsory Registration of Marriages Act, 2010**[17]and they need not to register again.[18]

[15]The Anand Marriage Act, 1909 (Act 07 of 1909).
[16]See s.6 read with s.10(1) of the Code.
[17] Uttarakhand Act 19 of 2010.
[18]See s.7(1) read with s.10(2) of the Code.

3. *Marriages before March 26, 2010 (in-state) or outside the state before the Code:*In such cases, there is optional registration only if certain conditions are fulfilled which include the age requirements i.e., 21 for Man and 18 for Woman, neither party has multiple spouses, no prohibited relationship between them and a ceremony was performed and they have been living together as husband and wife.[19]

D. *Penalties and Effect of Non-Registration of Marriages*

In case of failure to submit the memorandums for registration where it is mandatory to do so, a fine of up to ***10000 rupees***can be imposed by the Sub-Registrar. Further, making of false statements in the memorandum or submitting of forged documents would lead to an imprisonment of up to ***3 months*** and/or fine of upto***25000 rupees***.[20]

In case of failure to register the marriage within the stipulated time period where it is mandatory to do so, the Sub-Registrar shall issue a ***notice*** of not less than ***30 days*** asking for the registration. Failing to register even after the expiry of the notice period would entail a penalty of up to ***25000 rupees***. In any case, late registration would make the offender liable for the penalty in addition to the registration fees.[21] The Sub-Registrar is also liable for a penalty of up to ***25000 rupees*** in case he fails to act as per the procedure provided in the Code in case of non-registration.[22]

It is to be noted that even after such a procedure being provided for the purpose of registration, a marriage will remain valid for all purposes in case of non-registration, non-furnishing of required documents or memorandums, incorrect details or non-issuance of certificates.[23]

2. Provisions regarding Restitution of Conjugal Rights, Nullity of Marriage and Divorce, Incidental and Supplemental Provisions (Chapters 3 to 7)

In chapters 3 to 7, the Code deals with the aspects of Divorce, Judicial Separation and Restitution of Conjugal Rights which can be summarised as follows:

A. Restitution of Conjugal Rights and Judicial Separation

[19] See s.7(2) read with s.10(3) of the Code.
[20]See s.17 of the Code.
[21]See s.18 of the Code.
[22]See s.19 of the Code.
[23]S.20 of the Code.

Section 21 of the Code lays down the provision regarding the Restitution of Conjugal Rights which is verbatim of the Section 9 of the Hindu Marriage Act, 1955 (HMA). It thus says that either party may approach the court for this relief on the ground that the other party has withdrawn from the society of the former without any reasonable excuse.

Further, either party may move the court for the decree of Judicial Separation on any of the grounds mentioned for divorce under ***section 25(1)*** of the Code.[24] The wife is also entitled to file the petition on the additional grounds mentioned under clause 3 of section 25 of the Code. Thus, this provision is also verbatim to section 10 of the HMA, 1955. In case of such a decree being granted, it is no longer obligatory for the petitioner to cohabit with the respondent.

B. *Nullity of Marriage and Divorce*

Section 23 of the Code gives the grounds under which the Court can grant the decree of declaring the marriage as **void** which are as follows:

1. Either party had a spouse living at the time of the marriage
2. Either party, at the time of the marriage, is incapable of giving a valid consent due to unsoundness of mind, or was capable of giving a consent but was suffering from a mental disorder of such a kind which make him unfit for the marriage, or has been suffering from the recurring attacks of insanity
3. They are within the degrees of prohibited relationship
4. The marriage was barred by any other existing law in force

Section 24 provides the grounds under which the marriage becomes **voidable** which can be laid down as follows:

1. Non-Consummation of the Marriage due to the impotency of the Respondent
2. *Non-Fulfilling of the Age requirements of 21 and 18 years for Man and Woman respectively*. However, no such petition shall be accepted by the court if it is filed after the expiry of one year from the date the petitioner has attained the age of 21 years.[25]
3. *Obtaining the consent to the marriage by force, coercion or fraud*. However, no such petition shall be entertained after the expiry of one year from the cessation of such

[24] S.22 of the Code.
[25] See s.24(2)(a) of the Code.

force or fraud or the petitioner has lived with the respondent with his or her consent after such force had ceased to operate or such fraud had been discovered.[26]

4. The wife was, at the time of the*marriage, pregnant by a different man from the husband or that the husband had, at the time of the marriage, impregnated a woman other than the wife.*[27] However, the petition on this ground can be entertained only if the petitioner was ignorant of the facts at the time of the marriage, it is presented within one year of the commencement of the Code or of marriage and there has been no sexual intercourse after the discovery of such fact.[28]

Section 25 of the Code provides the grounds for the Divorce on the proving of which the court may grant the decree of divorce upon the petition of either party. Clause 1 provides the following grounds:

1. Adultery
2. Cruelty
3. Desertion[29] for at least 2 years
4. Conversion to another religion
5. Incurable mental disorder or of such a kind that the petitioner cannot reasonably be expected to live with the respondent
6. Incurable form of communicable venereal disease
7. Renouncing the world
8. Not being heard for 7 years or more
9. Contracting another marriage in violation of the law (Bigamy)
10. Failure to comply with an order of maintenance for at least one year

Additionally, either party can seek divorce on the ground that there has been no cohabitation for one year or more after the decree of judicial separation or that of restitution of conjugal rights has been passed.[30] Further, the wife can also seek divorce under clause 3 on the ground that the husband has committed rape or any other unnatural sexual offence since the marriage

[26]See s.24(2)(b) of the Code.
[27]See s.24(1)(d) of the Code.
[28]See s.24(2)(c) of the Code.
[29]Desertion means the "desertion of the petitioner by the other party to the marriage, without reasonable cause or without the consent or against the wish of such party, and includes the wilful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly".
[30]See s.25(2) of the Code.

or has any other wife living from marriage solemnized/contracted before the commencement of the Code. Lastly, both the parties can file the petition for *divorce by mutual consent* under *section 27* if the following conditions are fulfilled:

1. Living separately for one year or more
2. Have been unable to live together
3. Have mutually agreed to dissolve the marriage

In cases of exceptional hardship or depravity where reconciliation is deemed impossible, the court has the discretion to waive the one-year separation requirement and the six-month time limit for filing a motion,thus proceeding to issue a decree of divorce.[31]

3. Provisions regarding Succession

General Rule of Intestate Succession here in UCC is that Class I legal heirs will get the priority over the class II and so on. The order of passing the property is as follows[32]:

Order Of Passing of Estate to Legal Heirs	
Order Of Passing	**Legal Heirs**
Firstly	**Class 1 legal heirs** Spouse, Spouses, children, children and the spouses of predeceased children, parents
Secondly	**Class 2 legal heirs when there are no legal heirs** Step Parents, Siblings, Children and the spouse of predeceased siblings, siblings of parents, paternal grandparents, maternal grandparents
Thirdly	Other Relatives: When No Class 1 / Class 2 Relative Exists

[31]See s.27(3) of the Code.
[32]See s.49 of the Code.

Fourthly	To Government When No Relative Survives

The general rule regarding the distribution of Property among Class I heirs is that the heirs will inherit the property simultaneously (together) that means every relative listed in the class I legal heir will get a share in the property.[33] However, in case of heirs of class II, the heirs listed first will have the priority over the ones listed second, and so on. Each group of heirs listed in the same entry of class II would receive an equal share.[34]

The significant highlight of this part in the Code is that it has introduced equality in inheritance and succession matters. It introduced equal inheritance rights by shifting from the traditional property sharing norms. Under the Code, the property of the deceased will be distributed equally among the children, regardless of gender, spouse and the parents of the deceased.[35] This approach is different from the Hindu Succession Act, 1956 which favoured Male heirs over the female heirs.[36]

4. Provisions regarding Live-In Relationships

1. *Section 3(4)(b)* of the Code defines the live-in relationship as **"**a relationship between a Man and a Woman who cohabit in a shared household through a relationship in the nature of a marriage, provided that such relationship is not prohibited under Part 3 of the Code". ***Part 3*** of the Code *lays down the law for the regulation of live-in relationships* within the jurisdiction of Uttarakhand.
2. It is mandatory for the partners in a live-in relationship within the State, whether they are residents of the State or not, to submit the statement under *section 381(1)* of the Code to the Registrar of the jurisdiction where they reside.[37] Further, residents of the State in a live-in relationship living outside the territory of the State may also submit the statement to the Registrar of the area where they reside. Children born out of the live-in relationship are considered legitimate under the Code.[38]

[33]See s.51 of the Code.
[34]See s.52 of the Code.
[35]See s. 51 of the Code.
[36]See s. 6 of the Hindu Succession Act, 1956.
[37]See s.378 of the Code.
[38]See s.379 of the Code.

3. Registration of Live-In Relationships is prohibited under the following circumstances:

a) The partners fall within the degrees of prohibited relationship of each other as defined under section 3(1)(d) of the Code. However, this bar is not applicable in case the customs or usage permits such relationships, akin to marriage if such customs or usage aligns with the public policy or morality.[39]

b) If at least one partner is already married or involved in another such live-in relationship

c) If at least one partner is a minor

d) If the consent of either partner is obtained by fraud, force, undue influence, misrepresentation related to any material fact or circumstance concerning the other partner, including his/her identity.

4. Partners in or intending to enter into a Live-In relationship are required to submit the statement to the Registrar. Then, the Registrar conducts the inquiry to ensure that the relationship aligns with the law and may also summon the partners for verification. The Registrar would register the relationship or communicate reasons for refusal within ***30 days*** of receiving the Statement in the prescribed form.[40]

5. Partners may terminate such relationship by submitting a statement regarding the same to the Registrar, informing the other partner if only one of them decides to terminate it. Then, the Registrar informs the police about the same and also the parents or guardian if one partner is below the age of 21 years.[41]

6. *Section 387* prescribes punishment for *not adhering to the registration rule under Section 378***.** It lays down that the partners who have beenliving in such a relationship ***for more than a month***and have not registered themselves will be liable for an *imprisonment of up to 3 months and a fine of up to Rs 25,000.* A similar punishmentis laid down for those ***who furnish false statements*** in the declaration for registration of live-in relationships. Further, partners will be liable for***6 months imprisonmentand a fine of up to Rs 25,000*** for failing to furnish a statement of a live-in relationship after being sent a notice under Section 386.

IV. CRTICAL ANALYSIS OF THE CODE AND ITS PROVISIONS

[39]S.380(1) of the Code.
[40]S.381 of the Code.
[41]See s.384 and 385(3) of the Code.

The enactment of UCC by the Uttarakhand Government is the first State level implementation of the constitutional obligation envisioned under article 44 of the Constitution of India. However, it has triggered intense level discussions on its constitutionality, inclusivity and social impacts. There seem to be some progressive provisions in the Code which include the barring of polygamy and child marriage, equal rights for men and women on inheritance and mandatory registration of live-in relationships. However, certain things are problematic when it laid down the regulatory provisions for personal relationships, perpetuates gender biases in respect of marriageable age, exempts Scheduled Tribes from its application among others.[42] The various implications and limitations can be examined in the following part of the paper in the heads laid down hereinafter:

1. **Excessive Intrusions**

a) Some provisions which were beneficial for women in their personal laws have been overlooked in the UCC of Uttarakhand. For example, there was a limit on the testamentary succession in the Muslim Personal Law which means that a person cannot unilaterally deprive an heir from the entire estate to which he would be entitled if the person dies intestate. The Code now makes it possible for a person to deprive a woman completely from inheriting the property.[43] The Law Commission of India in 2018 had also recommended for such limits to be incorporated in the Hindu Succession Act of 1955 taking a cue from the Muslim Personal Law.[44]

b) There seems to be high level of State Surveillance on the people when the provisions relating to the mandatory registration of marriages and live-in relationships are observed. It is a violation of right to privacy and personal autonomy which is recognized as a Fundamental Right as implicit within the ambit of Article 21 of the Constitution in the landmark judgement of *K.S. Puttaswamy*v. *Union of India* [45] when the court observed that "Privacy is an intrinsic recognition of heterogeneity, of the right of the individual to be different and stand against the tide of conformity in

[42]Manik Tindwani, "The Uniform Civil Code of Uttarakhand: A Legal and Constitutional Analysis" 2(4) *Lawfoyer International Journal of Doctrinal Legal Research* 302 (2025).
[43] Aarti Mundkur, "Uttarakhand Uniform Civil Code: Excessive Bureaucracy, Few Rights" *The INDIA FORUM-A Journal-Magazine on Contemporary Issues* (2025), *available at:* https://www.theindiaforum.in/law/uttarakhand-uniform-civil-code-excessive-bureaucracy-few-rights(last visited on 8th May, 2025).
[44]Law Commission of India, "Consultation Paper on Reform of Family Law" (31st August, 2018).
[45](2017) 10 SCC 1.

creating a zone of solitude. Privacy protects the individual from the searching glare of publicity in matters which are personal to his or her life".

c) There is a provision of summary inquiry before any live-in relationship can be registered.[46] These powers are vague and arbitrary giving excessive power to the authority to inquire into all the aspects of the person's personal life. This process empowers the authority to summon any person for the purpose of inquiry, thus enabling it to summon even a stranger. This would enable a stranger to cause obstructions to the relationship if he doesn't approve it. In such environment, the relationships which do not conform to the traditional forms of marital relationships are exposed to harassment and violence.[47]

d) While the recognition of Children born out of Live-In Relationships as legitimate is a welcome step but it is not clear whether the traditionalists would approve of such children as legitimate who still look at such relationships as immoral or unconventional and doesn't approve of it.[48]

2. Arbitrary Provisions

a) In case the Registrar believes, while looking at the statement submitted for registration of a live-in relationship, that the statement made is incorrect or suspicious, he may make a reference to the Police to initiate appropriate actions.[49] There is no clarity as to what would be an "Appropriate Action". Further, there are no clear grounds on which such suspicion would be based. Such provisions enable arbitrary actions by the Police and there is no provision of appeal against such a reference made by the Registrar.

b) There is a confidentiality granted to a woman under the Medical Termination of Pregnancy Act, 1971 while undergoing such termination.[50] However, the UCC here says that it is mandatory for the woman applying for the termination of the live-in relationship or during the inquiry of such a relationship, to declare whether she is pregnant or not.[51] The purpose of such provision seems to a futile one since the children born out of such relationship are already considered legitimate under the

[46]Section 381(2) of the Code.
[47]*Supra* note 41.
[48]*Ibid.*
[49]See s.385(2) of the Code.
[50]See s.5A of the Medical Termination of Pregnancy Act, 1971 (Act 34 of 1971).
[51]See rule 17(2) of the Uniform Civil Code Rules Uttarakhand 2025.

code.[52] This amounts to be a violation of bodily integrity and reproductive autonomy of the woman. Further, disclosing such information thereafter to the Police subjects the said woman to moral policing when there ought to be no role of the Police in such matters.[53]

c) The age requirements of 21 and 18 years for Man and Woman respectively reflects the gender inequality when the Code claims its opposite. The age requirement for women should be increased to 21 years as well as has been recommended several times. Thus, the code reinforced the gender inequality and did not take into consideration the negative impacts on the health of a woman on account of their early marriages.[54]

3. Marriage and the Law

a) It is mandatory for the partners intending to enter into marriage to subject themselves to an inquiry by the government officials.[55] These provisions which mandate the notice and inquiry before even the marriage can be registered under the Code have been challenged before the Supreme Court on the ground that they violate the fundamental right to privacy and decisional autonomy, wherein it is pending. Further, the code mandates the taking of religious and caste data for the registration of marriage.[56] There is no code which mandates such data being taken and there seems to be no purpose for such data being submitted in the hands of the State when the code claims to be a secular one. Such provisions would expose the inter-faith and inter-caste couples to great amount of harassment and undue inquiry along with the social prejudices and opposition or interference by the family members or the society when such matters are purely private and personal.

b) Further, the code mandates the Sub-Registrar to inform the parents or the guardian about the intention of the couple to marry which is a violation of the right to marry a person of one's choice. This right is a fundamental right implicit within the right to life under article 21 of the Constitution. It is grossly violative of the principles which

[52]S.379 of the Code.
[53]*Supra* note 41.
[54]Tripathy A and Mishra PS, "Raising Age of Marriage: A Better Deal for Women" Deccan Herald (December 20, 2021),*available at*<Raising age of marriage: A better deal for women> (Last visited on May12, 2024).
[55]See Rule 7(1)(a) of UCC rules, 2025.
[56]*Ibid.*

have been recognised by the Supreme Court in many cases like the *Shafin Jahan Case*.[57]

c) The Code mandates the providing of Aadhar Details along with a copy of Aadhar card for the purpose of registration of Marriage, Live-In relationships or Divorce.[58] The use of Aadhar Card and its details was restricted to the welfare schemes, benefits and services by the Supreme Court in the *Aadhar Case*.[59] Further, Aadhar linked mobile numbers are compulsorily required under the Code which is gross violation of the right to privacy laid down under the *Puttaswamy Judgement.*[60]Even a foreign national is required to obtain the Aadhar Card if he intends to enter into marriage or a live-in relationship with a resident of Uttarakhand.[61]

4. Access to Schemes and Benefits

a) The Code makes it a pre-requisite to have the marriage registered before any party to the marriage can have an access to the schemes of the Government and its benefits. Such a requirement can have an unintended consequence where a woman is kept in abeyance by the husband by refusing to register the marriage or the woman is abandoned by him without the marriage being registered. This could make the woman not having the benefits of the maternal healthcare schemes or other social security benefits of the government schemes. Access to such measures for persons made vulnerable due to their circumstances should not be denied to them due to their marriage being unregistered.[62]

b) There is complete bypassing of the Same Sex Couple in the Code. It is beyond doubt these days that the intimate relationships are not limited to the heterosexual couples as is being demonstrated in the recently passed judgement of *Supriyo @ Supriya Chakraborty* v. *Union of India* [63]. Though the Court specifically could not grant legal recognition to the marriage between the same sex couple, it was very clear when it said that it is time to recognise such relationships and grant them equal benefits of

[57]*Shafin Jahan* v. *Asokan K.M,* AIR 2018 SC 1136.
[58]Rule 9(3)(d) of the UCC Rules, 2025.
[59]*K.S. Puttaswamy*v. *Union of India,* (2018) 1 SCC 809.
[60]*K.S. Puttaswamy*v. *Union of India,* (2017) 10 SCC 1.
[61]Rule 9(9)(e) of the UCC Rules, 2025.
[62]*Supra* note 41.
[63]2023 SCC OnLine SC 1348.

social security measures and the government schemes without any discrimination whatsoever.

5. Code's Potential Conflict with Central and Personal Laws

The Code might clash with the Central and Personal Laws. The Personal Laws fall under the Concurrent List of the seventh schedule of the Constitution of India. However, in case of a conflict with the Central laws, the Central law shall prevail.[64] The code has many different provisions relating to marriage and divorce when compared with some central laws like the Hindu Marriage Act, 1955, the Special Marriage Act, 1954, etc. Further, the rules of inheritance under the code conflicts with those provided under the Hindu Succession Act, 1956 and the Indian Succession Act, 1925. Such conflicts of the Code with the Central Laws could make the Code void which might lead to legal confusion and would undermine the purpose of enacting such a uniform code.[65]

V. CONCLUSION

The UCC and its discourse in the Indian Context is a complex system where factors like religious freedom, Societal Customs and cultural diversity are involved. Implementing a UCC in such a diverse geography of people requires a meticulous examination of all possibilities and facts, consultation with all stakeholders and fostering agreement among all by taking into account their apprehensions.[66] An inclusive and a rational approach is required while implementing UCC at a larger level. The UCC of Uttarakhand is being discussed hereinabove and it suffers from many ambiguities reflecting a non-inclusive approach concerning many aspects of the laws being covered. Significant Constitutional challenges lie ahead on the grounds of potential violations of fundamental rights like the right to freedom of religion and the right to equality.

The controversial aspects of the compulsory registration of marriages, divorce and the live-in relationships with its strict procedural requirement present many concerns like that of privacy, personal autonomy and the right to choice etc. The penalties prescribed in case

[64] Art. 254(1) of the Constitution of India.
[65] *Supra* note 40 at 313.
[66] Prof. Harish K. Thakur, "Uttarakhand UCC Bill and its Implications" *Modern Diplomacy All Views/All Voices South Asia* (2024).

of non-compliance exacerbate these issues.[67] There is an intentional exemption in favour of Scheduled Castes which again raises the question of uniform application of the code, exacerbating discrimination. The Social concerns include the neglecting of minority customs and their practices and indirectly incorporating the Hindu Personal law in the form of an UCC. It leads to fear of majoritarianism and cultural uniformity. The lack of ample public engagement so that the Code could move smoothly and swiftly has somewhat weakened public trust among many social groups.[68]

The need of uniformity through the UCC has been highlighted time and again by the apex court and is a constitutional obligation. However, it should not be forgotten that harmonisation does not necessarily lead to homogenisation. While there is a need to ensure that the religious dogmas do not create obstacles in the way of enforcing the constitutional guarantees, adequate safeguards and a stable mechanism should be established so that the pluralistic fabric of the nation is not jeopardised at the instance of uniformity.[69] The principles of objectivity, fairness and equity should not be bypassed while implementing laws like UCC and the discourse should be based on factual data, personal experiences of those directly influenced by personal laws and comparative studies.

The UCC in Uttarakhand is the first such legislation in the whole country which seeks to bring into effect the principle under article 44 of the Constitution. The need now is to observe the society getting adjusted to the new regime, the judicial application of the Code and its interpretation and the creation of awareness so that the provisions which are meant for the protection of people from all faiths and genders are not misused and the couple in live-in relationships are not harassed in the name of implementing the procedural requirements of the Code.

Recommendations for Progress

Examining the Uttarakhand UCC reveals many aspects and gives an idea as to what should be the way forward while looking to implement this Code and aiming for a robust framework of a nation-wide UCC. Some suggestions can be laid down as follows:

[67] *Supra* note 40 at 334.
[68] *Id.* at 335.
[69] Shameek Sen, "Clearing the Decks for the Uniform Civil Code? An Evolutionary Analysis of the Supreme Court's Engagement with Religious Freedoms" 62(3) *Journal of the Indian Law Institute* 341 (2020).

a) There should be a detailed review of the entire Code by involving the multitude of the people in the consultation process, like minorities, women groups and legal authorities. The Code should be amended to eliminate those provisions which infringe the fundamental rights and are against the principles of equality to uphold cultural and pluralistic ethos of the country.

b) The implementation of the UCC should be gradual and spontaneous rather than being swift and abrupt. There should be a understanding at the ground level through the factual data, real life experiences of the people and then proceed to gradually refine the existing personal laws. The ideas should be harmonised keeping in view the court rulings, legislative changes, evolution of society and efforts of the community.

c) The Judicial system should be upgraded and made robust by having an effective justice delivery mechanism through expeditious disposal of cases and incorporating legal aid systems at all levels. The number of family courts should be increased along with the thorough training of the judges and legal professionals dealing with personal matters. There should be a special focus on the justice for women, marginalised groups and isolated regions of the country.

Lastly, there is a need to develop a consensus on UCC and such process should move on the principles of constitutional ethics, secularism and legal governance. It would require genuine negotiations, appropriate adjustments and balanced compromises. Still, there should be no dilution of the fundamental principles of human dignity, respect and equality.

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