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## Uttarakhand Uniform Civil Code: Excessive Bureaucracy, Few Rights

By: Aarti Mundkur

*The Uttarakhand law may violate privacy and religious freedoms by imposing controls on marriage, live-ins, and divorce – measures that can disproportionately burden women and inter-faith couples. This surveillance risks undermining rights rather than safeguarding them.*

The central concern regarding the Uttarakhand Uniform Civil Code is its potential violation of two fundamental rights: the right to privacy and the right to religious freedom. Its rules on registering relationships, conducting inquiries, and regulating personal choices could disproportionately harm vulnerable groups, especially women and inter-faith couples. The code's provisions on live-in relationships, marriage registration, and divorce point to excessive state intrusion and a lack of gender justice. Ultimately, civil society needs to question the necessity and consequences of the code because it will in all likelihood prioritise surveillance over the protection of rights.

The Uttarakhand Assembly passed a uniform civil code in February 2024, and it received President's assent in March 2024. In January 2025, the rules implementing the code were passed and notified. The code is applicable not only to those who reside in Uttarakhand but also to those “who reside outside the territories to which the code extends.” This means all Uttarakhand residents are bound by the code, regardless of where they currently live. However, Scheduled Tribes who fall under the purview of Article 336 (25) of the Constitution of India, and those whose rights are protected by Part XXI of the Constitution, are exempt from the code.

The code itself has four parts, comprising 392 sections, and it covers marriage and divorce, succession, live-in relationships, and miscellaneous issues. Each part is subdivided into several chapters.

### Uniform civil code

The words “uniform civil code” appear in Article 44 of the Constitution, in the chapter titled Directive Principles of State Policy. As is widely known, the directive principles are not enforceable by an individual in the manner in which fundamental rights are enforceable, and they are seen as guiding principles for the state to enact legislations and policy. To put it another way, they are a set of principles that the state should follow, and are considered “fundamental in the governance of the country.”

More recently, many have grown wary – fearing that a uniform civil code might be used to target religious minorities and doubting the government's commitment to genuinely uphold diversity and equality in any new code.

The Supreme Court had indicated the desirability for a uniform civil code on many occasions to Parliament. The first such instance was in the *Shah Bano case* (1985), where a Muslim woman approached the court for grant of maintenance under the provisions of the Code of Criminal Procedure after her husband had pronounced talaq. In 1985, then Chief Justice Y.V. Chandrachud held that “a common civil code will help the cause of national integration by removing disparate loyalties to law which have conflicting ideologies.” These were merely observations of the court, not binding on Parliament.

The second instance was in *Sarla Mudgal v. Union of India* (1995), where the question before the court was whether a man could convert to Islam to contract a second marriage. Referring to the codification of Hindu personal law, Justice Kuldeep Singh held, “Where more than 80% of the citizens have already been brought under the codified personal law, there is no justification whatsoever to keep in abeyance, any more, the introduction of the ‘uniform civil code’ for all citizens in the territory of India.”

Reminding the state once again of its obligation to enact a uniform civil code, the Supreme Court [stated in 2003, in a case](#) challenging a provision of the Indian Succession Act, “We would like to state that Article 44 provides that the state shall endeavour to secure for all citizens a uniform civil code throughout the territory of India. It is a matter of great regret that Article 44 of the Constitution has not been given effect to. Parliament is still to step in for framing a common civil code in the country.”

It can therefore be surmised that as far as the apex court is concerned, a uniform civil code is indeed desirable. At the heart of the controversy of whether a uniform civil code is desirable or not are two fundamental rights: the right to freedom of religion and the

right to equality. Personal laws allow for the practice of religion, including how marriages, custody of children, and rights of adoption are practiced. The right to equality demands, in the context of the uniform civil code, that gender equality be addressed in a comprehensive manner.

Over the years, India's women's movement has shifted its stance on a uniform civil code. Initially, a single, uniform code was broadly welcomed, but activists pressed for personal law reforms following the Shah Bano judgment. More recently, however, many have grown wary, fearing that a uniform civil code might be used to target religious minorities and doubting the government's commitment to genuinely uphold diversity and equality in any new code. Anti-conversion laws (the so-called 'love jihad' laws) enacted by several states have a bearing on how intimate relationships are surveilled and on inter-faith marriages, exposing them to vulnerabilities. It is against this backdrop that the uniform civil code has been enacted for the state of Uttarakhand.

### Excessive intrusion

Provisions beneficial to women under their personal laws have been overlooked completely in the formulation of the Uttarakhand code. For example, Muslim personal law places certain limits on testamentary succession. This means that the entire estate of a person cannot be willed away, ensuring that a person cannot unilaterally deprive an heir. The code now makes it possible for Muslim women to be deprived of any share in property. (In 2018, the Law Commission of India had [proposed](#) that Hindu succession laws consider this limit on testamentary succession – taking a cue from Muslim personal law – to prevent women from being excluded as heirs.)

There appear to be high levels of state surveillance in the code's provisions relating to the mandatory registration of marriage and live-in relationships. This in effect violates the right to privacy and personal autonomy that was secured as a fundamental right in the landmark judgment of *Justice K.S. Puttaswamy v. Union of India* (2018). The Supreme Court observed, “Privacy is an intrinsic recognition of heterogeneity, of the right of the individual to be different and stand against the tide of conformity in 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.” The Uttarakhand code and its accompanying rules seek to exercise control over decision-making and sexual autonomy, depriving persons of their fundamental rights.

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The code mandates a summary inquiry into all live-in relationships before they are registered. The powers of inquiry are broad and vague, giving powers to the authority to inquire into all aspects of a person's life. The procedure of summary inquiry allows the authority to summon any person during the inquiry. This allows for persons who are strangers to the relationship to intervene, enabling those hostile to the relationship to cause obstructions for the parties to the relationship. Relationships that transcend caste and religion have been known to be subjected to “honour” killings. In such a social environment, those who seek to subsist outside the margins of traditional marital relationships may be exposed to harassment and violence. Further, the purpose of the inquiry before registration is to establish the real nature of “consent”, which is a gross intrusion into a person's choice.

There are arbitrary powers conferred on the registrar who is conducting inquiries under the code's rules. These include a “discrete inquiry” from “through his/her own sources” regarding any subsisting live-in relationship/marriage. There is no defining of who these “sources” could be, and it is even more absurd that a “discrete inquiry” can be conducted. How is it possible to conduct such an inquiry without revealing the identity of the persons inquired into? Nor is it clear who all can be summoned during the course of an inquiry.

While the code's recognition of children born from live-in relationships as legitimate is a welcome step, it is uncertain if traditionalists will view this positively in a society that often disapproves of such relationships as unconventional or “immoral”.

The code sets the minimum marriage age at 18 for women and 21 for men – yet imposes a higher threshold for live-in relationships. Under its rules, any couple cohabiting before age 21 must register their relationship within 30 days, and the registrar must notify their parents or legal guardians. This requirement injects parental oversight into what would otherwise be an adult decision, thereby limiting young adults' autonomy. Consequently, while women may marry freely at 18, those same women cannot enter a live-in relationship without parental involvement until they turn 21.

### Arbitrary provisions

If a registrar believes that the contents of the statement of a live-in relationship are incorrect or suspicious, he or she may direct the police to initiate appropriate action. “Appropriate action” is undefined in the code. Nor is it clear what grounds of suspicion there may be. Provisions such as these allow for the arbitrary use of police action. Further, there is no process of appeal against a reference made by the registrar to initiate “appropriate action”.

The [Medical Termination of Pregnancy Act, 1971](#) grants confidentiality to women undergoing medical termination of pregnancy. The Uttarakhand code circumvents this by making it mandatory for women to disclose pregnancy at the time of termination of a live-in relationship and during its inquiry. This amounts to a serious violation of reproductive autonomy. It is not clear what the purpose of such a declaration is. Since the code declares that children born during the course of a live-in relationship are legitimate children, there is no reason to declare the state of pregnancy as mandated by the act.

As far as live-in relationships are concerned, the Uttarakhand code and its rules have created a bureaucratic, excessively intrusive procedure, which has resulted in several fundamental rights being trampled on.

Given that the Medical Termination of Pregnancy Act exists to ensure access to safe abortion, the mandatory disclosure of pregnancy to a registrar—when a woman need not disclose pregnancy even to her husband—is an outright violation of women’s bodily integrity and autonomy. Further, forwarding this information to the police as a part of the termination of a live-in relationship subjects women to moral policing. There ought to be no role for the police to play either in live-in relationships or their termination.

In all, as far as live-in relationships are concerned, the Uttarakhand code and its rules have created a bureaucratic, excessively intrusive procedure, which has resulted in several fundamental rights being trampled on. If the purpose of the code is to protect women in live-in relationships from violence, it is not clear how it achieves this. No part of the code goes beyond what is already protected under the [Protection of Women from Domestic Violence Act, 2005](#). It is unclear what the agenda is apart, from moral policing and surveillance.

## Marriage and the law

Similar to live-in relationships, there are a detailed set of provisions and corresponding rules that govern marriage and summary inquiry before a marriage is solemnised. It is to be kept in mind that the [Hindu Marriage Act, 1955](#) has no procedure for any summary inquiry by a government officer.

The [Special Marriage Act, 1954](#) does have a procedure for inquiry but it is not like the summary inquiry that the Uttarakhand code mandates. At present, the procedure for notice and inquiry under the act has been challenged and is pending before the Supreme Court. In that challenge, it has been argued by the petitioners that the mandatory notice and inquiry prescribed under the act are arbitrary and violative of the right to privacy and decisional autonomy.

Registering a marriage under the Uttarakhand code requires disclosure of religion and caste. At present, no law of marriage mandates registration, except the Special Marriage Act, which arguably creates the only secular framework for inter-religious marriages. It is not clear why the code mandates the collection of caste and religious data for the registration of marriage. If the Uttarakhand code is purportedly secular, why should the caste and religion of parties have any relevance? Moreover, why should this data exist in the hands of a state authority?

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Given that registration of marriage is mandatory under the Uttarakhand code, further subjecting a person to an arbitrary, roving summary inquiry is not justified. There is no clear nexus between the summary inquiry and protecting women, as the code claims. It is a grossly disproportionate process that creates interference in matters that are intimate and private. Inter-caste and inter-religious couples will be exposed to a great deal of vulnerability during such an inquiry. Social prejudices and opposition from family members will now have a basis in law in the guise of ensuring that only “legitimate” parties enter into a marriage. The authority given to conduct such an inquiry permits seeking “additional” information. It is not clear what this additional information could be.

The code mandates that parents or guardians be intimated about the intention of parties to marry via email, SMS, or WhatsApp. The choice to marry a person of one’s liking is protected under the right to life under Article 21 of the Constitution. The requirement that the sub-registrar inform parents or guardians is grossly violative of principles recognised by the Supreme Court of India in cases such

as *Shafin Jahan* (2018).

The Uttarakhand code and its rules mandate the submission of Aadhaar details, including a copy of the Aadhaar card, at the time of registering live-in relationships, marriages, and divorces. In the Aadhaar case, the Supreme Court had restricted the use of Aadhaar to state welfare schemes, benefits, and services. Aadhaar-linked mobile numbers as mandated under the code are a gross violation of privacy as elaborated in *Puttaswamy*. Further, the UUCC requires that a foreign national who intends to enter a live-in relationship or marriage with a resident of Uttarakhand must also obtain an Aadhaar number, without which registration is not possible.

Decrees that dissolve or nullify a marriage are passed by courts of law. These decrees may be appealed against in a higher court of law, typically a high court and then the Supreme Court. The code mandates that parties register all decrees of divorce and nullity with the registrar after the court has passed it. It is not clear at what state these are to be registered. For example, if the family court passes a decree that is appealed in the high court and the appeal is pending, should the party register the decree?

It is also not clear what the actual purpose of registering such decrees is. There is no legal purpose that the registration satisfies. If at all the registrar has to check that a person is divorced before he or she can get remarried, either copies of the decree can be furnished, or there ought to be digital inter-departmental communications of decrees between the registrar and the court.

### Access to schemes and benefits

The Uttarakhand code mandates registering marriages as a prerequisite to accessing government schemes and benefits. It is not clear what the nexus between marriage registration and such access to schemes is. It also does not answer vexing problems such as those confronting abandoned women, whose husbands may not cooperate in the registration process. They could suffer the lack of access to maternal healthcare or other schemes intended for women. Access to social security measures intended for those who already live a vulnerable life should not be contingent on the process of marriage registration. This penalises persons based on their marital status.

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Any uniform civil code must satisfy two criteria—one, it must be gender just. Gender-just laws must recognise that women are particularly disadvantaged in matters of succession and in the accumulation and distribution of matrimonial property. Matrimonial property refers to that pool of assets accumulated by a spouse, usually the husband, after the marriage has taken place. If the UUCC did indeed wish to be gender just, it would have created a scheme of division of matrimonial property. It is silent on this aspect of matrimonial law.

Second, the right to enter into intimate relationships goes beyond heterosexual couples, as the recent petitions led by *Supriyo @ Supriya Chakraborty & Anr. v. Union of India* (2023) demonstrate. While the Supreme Court has held that the scheme of the Special Marriage Act does not lend itself to same-sex marriages, it is time to grant legal recognition to same-sex relationships and marriages. A truly committed uniform civil code would have addressed this serious and growing need.

To enact a uniform civil code requires a willingness to engage with the complexity of personal law, by minutely examining what parts of personal law can be retained and what parts are discriminatory. It requires a serious interrogation into the question of equality. The Uttarakhand code does not provide any such interrogation. At best, it retains large aspects of codified Hindu law with some minor tweaks and excessive procedural intrusion into lives.

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