



Analysing Uttarakhand's UCC Bill

This editorial is based on "[A chilling effect on the freedom to love](#)" which was published in The Hindu on 26/02/2024. The article analyses how the Uttarakhand Uniform Civil Code Bill undermines constitutional rights to liberty, privacy, and equality by penalising consensual relationships and infringing on individual autonomy.

For Prelims: [Uniform Civil Code \(UCC\)](#), [Fundamental Rights](#), [Directive Principles of State Policy](#), [Law Commission](#).

For Mains: Significance of Uniform Civil Code and challenges in its Implementation.

The Uttarakhand [Legislative Assembly's](#) passing of the [Uniform Civil Code \(UCC\)](#) of Uttarakhand Bill, 2024, seeks to consolidate laws regarding marriage and property inheritance. The Bill only awaits the [President's](#) assent to become an enforceable law. However, a concerning feature of the Bill is the mandatory registration of live-in relationships, criminalising them if certain conditions are not met. This move not only violates individual autonomy but also raises questions about the state's role in regulating personal relationships.

What is the Uniform Civil Code?

▪ About:

- The UCC is mentioned in **Article 44** of the Constitution as part of the Directive Principles of State Policy, that the state should work to establish a uniform civil code for all citizens across India.
- However, the Constitution's framers left it to the government's discretion to implement the UCC.
- Goa is the only state in India with a UCC, following the Portuguese Civil Code of 1867.

▪ Supreme Court of India Stance on UCC:

- **Mohd. Ahmed Khan vs Shah Bano Begum Case, 1985:** The Court observed that "it is a matter of regret that Article 44 has remained a dead letter" and called for its implementation.
 - Such a demand was reiterated in subsequent cases such as Sarla Mudgal v. Union of India, 1995, and John Vallamattom v. Union of India, 2003.

▪ Jose Paulo Coutinho v. Maria Luiza Valentina Pereira Case, 2019:

The Court hailed Goa as a "shining example" where "the uniform civil code is applicable to all, regardless of religion except while protecting certain limited rights" and accordingly urged for its pan-India implementation.

▪ Law Commission's Stance:

- In 2018, the 21st Law Commission headed by former Supreme Court judge Justice Balbir Singh Chauhan submitted a consultation paper on "Reforms of family law" wherein it observed that the "formulation of a Uniform Civil Code is neither necessary nor desirable at this stage".

Why was the Bill Sent for President's Approval?

▪ Ambiguous Nature of Subject Matter:

- **Article 162** of the [Indian Constitution](#) indicates that the executive power of a State extends to matters with respect to which the State Legislature has power to make laws.
- In view of the provisions of Entry 5 of the Concurrent List of the [Seventh Schedule](#), the constitution of a Committee to introduce and implement Uniform Civil Code (UCC) per se cannot be challenged as *ultra vires*.
 - Entry 5 of the Concurrent List deals with "marriage and divorce; infants and minors; adoption; wills, intestacy, and succession; joint family and partition; all matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law.

▪ Power of Governors to Reserve the Bill:

- [Governors](#) may reserve the bill for the consideration of the president. The reservation is obligatory where the bill passed by the state legislature endangers the position of the state high court. However, the governor can also reserve the bill if it is of the following nature:
 - Against the provisions of the Constitution
 - Opposed to the DPSP
 - Against the larger interest of the country
 - Of grave national importance
 - Deals with compulsory acquisition of property under Article 31A of the Constitution.
 - In this case, the bill overrides several national laws such as Special Marriages Act, 1954, Hindu Marriage Act, 1955, Shariat Act, 1937 etc, and hence was sent for the President's approval before implementation.

What are the Key Highlights of Uttarakhand's UCC Bill, 2024?

▪ About:

- The UCC aims to replace distinct personal laws of every religion, focusing on marriage, divorce, adoption, and inheritance, guided by Article 44 of the Constitution. This code would be a single set of personal laws that would apply to all citizens, regardless of religion.
- Some of the key proposals put forth by the committee include the prohibition of [polygamy](#), *nikah halala*, *iddat* (a mandatory period of waiting to be observed by women following the dissolution of a Muslim marriage), triple talaq, and child marriage, uniform age for girls' marriage across all religions, and mandatory registration of live-in relationships.

▪ Significance:

- The UCC Bill, 2024 aims to focus on gender equality by treating men and women equally in matters such as inheritance and marriage.
- The Code is also likely to extend an equal property share to Muslim women against the existing 25% share accorded under Muslim personal laws.

▪ Exemptions:

- [Scheduled tribes \(STs\)](#) have been exempted from the purview of the bill. The tribal population in the state, which is around 3%, had been voicing its dissent against UCC in the wake of the special status accorded to them.

▪ Concerns:

- The **minimum age for marriage is set to remain the same** - 18 years for women and 21 years for men.
- A debatable feature of the Bill is the **mandatory requirement of registration of a live-in relationship** and its criminalisation, if certain conditions are not complied with.
- With this mandate, the proposed law will confer disproportionate power on the state to penalise consensual relations and violate individual autonomy.

₹10K FINE IF MARRIAGE NOT REGISTERED

<ul style="list-style-type: none">> Minimum marriage age 18 yrs for women, 21 yrs for men. Up to 6 months jail and/or ₹25,000 fine for breach> Mandatory registration within 60 days or ₹10,000 fine for marriages solemnised after UCC implementation> Dissolution of marriage in contravention of UCC norms to be punishable with up to 3 years in jail> Polygamy, bigamy prohibited. Halala, iddat, triple talaq banned> Up to 3 years in jail and/or	<p>₹50,000 fine for violating norms</p> <ul style="list-style-type: none">> Live-in couples to register within a month of relationship. Details to be verified by registrar who can conduct inquiry to establish validity of relationship> Cannot rent or buy property without registration> Child born of relationship will be considered legitimate> Must inform officials on termination of relationship> Woman deserted by partner entitled to maintenance
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What are the Concerns in the Bill in Regulating Consensual Relationships?

- **Overriding Powers to the Registrars:**
 - The Bill, requires live-in partners to submit a 'statement' to the Registrar concerned. The Registrar has the powers to examine the statement and conduct an inquiry into the relationship.
 - Moreover, partners can be required to make a personal appearance and the **Registrar can also refuse to register the relationship**. Termination of a relationship also requires notice to be submitted.
- **Imposition of Criminal Penalty:**
 - Another unwanted feature of the Bill is the **criminal penalty — imprisonment or fine (or both)** — if the statement is not filed.
 - The couple will be penalised for the submission of false information. The Registrar will inform the details of the live-in relations to the police station whose jurisdiction governs the couple.
- **Infringing on Individual Autonomy:**
 - The Bill **ignores the foundational reason for a live-in relationship**, which is that it lacks the formal structure and obligations of a marriage. Those who are living together, therefore, enjoy autonomy in their consensual partnerships, which a regulated marriage does not. Erasing this much-needed distinction between these institutions is not justiciable.
- **Excessive Moral Policing:**
 - In a society that thrives on moral policing of young couples, the Bill, unsurprisingly, imposes a chilling effect on live-in partners and **implicitly discourages such relationships**.
 - The **involvement of the police** accelerates this concern. Couples will be wary of entering into genuine relationships since a lack of compliance not only invites civil consequences, as regulatory laws routinely require, but also criminal ones.
- **Violates the Right to a Dignified Life:**
 - The one-month limit (whoever is in a live-in relationship for more than a month from the date of entering into such a relationship without submitting a statement will be punished) also restraints intimacy in the most direct of ways. It infringes on free decision making and an expression of feelings, protected under Article 21, which lays stress on the right to a dignified life.
 - Individuals are constrained by the provisions of the Bill while entering into live-in relationships, which impedes the ability to make the deepest personal choices.

What Considerations Should be Taken into Account when Regulating Consensual Relationships?

- **Adopting a Clear Policy in Sync with Constitution:**
 - **A democratic liberal state must have a clear policy on what it chooses to criminalise** and what it does not. This policy must be in consonance with what the

Constitution protects. The fact that certain social practices are undesired by a conservative majority is an insufficient reason for criminalisation.

- As the philosopher Joel Feinberg recognises, “Indeed, everything about a person that the criminal law should be concerned with is included in his morals. But not everything in a person’s morals should be the concern of the law.”

▪ **Following the SC’s Views on Adultery- the Right to Sexual Privacy:**

- The law on adultery was contained in Section 497 of the erstwhile [Indian Penal Code \(IPC\)](#). The law, as it stood, discriminated on the basis of sex by punishing only men. But another crucial feature of the law was that it criminalised consensual sexual relations.
- While striking down the law, in ***Joseph Shine vs Union of India (2018)***, the judiciary emphatically held: “Treating adultery as an offence would tantamount to the State entering into a real private realm”
 - Moreover, it said that it is not the lookout of the state to interfere in the lives of individuals “which were within the sphere of his or her constitutionally protected rights of privacy and self-determination.”

▪ **Adhering to the Principles of Right to Privacy:**

- Further, in ***Justice K.S. Puttaswamy and Anr. vs Union of India and Ors. (2017)***, the Supreme Court of India also clarified that “The destruction by the State of a sanctified personal space whether of the body or of the mind is violative of the guarantee against arbitrary State action. Privacy of the body entitles an individual to the integrity of the physical aspects of personhood.”

▪ **Preventing Discrimination and Fostering Inclusion:**

- Inter-caste and inter-religious couples face the prospect of severe harassment by the authorities and social stigma in our country. These couples often experience violence, which includes honour killings, as data show.
- A proposed law with a **high regulatory content on live-in relations is most likely to affect vulnerable couples first**. The provisions of the Bill are bound to further exacerbate the issue rather than alleviate it. States must adopt an inclusionary regulation to support the bodily integrity of its population.

▪ **Understanding Right to Marry, an Integral Part of Life:**

- Individuals have the inherent right to choose their life partners, and neither the State or society, nor the parents of the individuals should have the authority to interfere with or restrict this right when it concerns “two consenting adults”.
- The right to marry is an incident of human liberty. The right to marry a person of one’s choice is not only underscored in the [Universal Declaration of Human Rights \(UDHR\)](#) but is also an integral facet of Article 21 of the Constitution of India which guarantees the right to life”.

▪ **Respecting Women’s Autonomy Over Their Bodies:**

- The modern society promotes women’s autonomy over their bodies and sexuality as part of the right to privacy, including the right of women to work during at night, protection of reproductive rights, the right to bodily integrity, the rights of unwed mothers, the right against forced sterilisation and the right to decide on marriage, procreation and the choice of a family life.
- These are matters of one’s most intimate and personal choices and essential in the pursuit of happiness, which is founded upon autonomy and dignity.

▪ **Ensuring Horizontal Application of the Right to Privacy:**

- This refers to the protection of the right against non-state actors, holding that there is a need for regulation of how information can be stored, processed and used by non-state actors.
- It holds that privacy protects the individual from interference from both State and non-State actors and allows the individuals to make autonomous life choices.

▪ **Incorporating Proportionality Test:**

- The proportionality test, as is well known, comprises four stages: **legitimate goal, rational connection, necessity** (i.e., least restrictive and effective measure), and balancing.
- Such regulations should be tested on the touchstone of these principles before being brought into effect.

Conclusion

The mandatory registration and potential criminalisation of live-in relationships, as stipulated by the Uniform Civil Code of Uttarakhand Bill, 2024 infringe upon the fundamental rights of individuals. By erasing the distinction between marriage and live-in relationships, the Bill fails to recognise the unique nature of the latter. This move not only imposes a chilling effect on couples but also violates their right to privacy and freedom of choice. It is imperative that a democratic society upholds principles of autonomy, privacy, and equality, rather than imposing arbitrary restrictions on personal relationships.

Drishti Mains Question:

Discuss the implications of the Uniform Civil Code (UCC) on individual autonomy and privacy, considering its potential impact on personal relationships and societal dynamics.

UPSC Civil Services Examination Previous Year's Question (PYQs)

Prelims:

Q1. Consider the following provisions under the Directive Principles of State Policy as enshrined in the Constitution of India: **(2012)**

1. Securing for citizens of India a uniform civil code
2. Organising village Panchayats
3. Promoting cottage industries in rural areas
4. Securing for all the workers reasonable leisure and cultural opportunities

Which of the above are the Gandhian Principles that are reflected in the Directive Principles of State Policy?

- (a) 1, 2 and 4 only
(b) 2 and 3 only
(c) 1, 3 and 4 only
(d) 1, 2, 3 and 4

Ans: (b)

Q2. A legislation that confers on the executive or administrative authority an unguided and uncontrolled discretionary power in the matter of the application of law violates which one of the following Articles of the Constitution of India?

- (a) Article 14
(b) Article 28
(c) Article 32
(d) Article 44

Ans: (a)

Mains

Q. Discuss the possible factors that inhibit India from enacting for its citizens a uniform civil code as provided for in the Directive Principles of State Policy. **(2015)**

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