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# THE UNIFORM CIVIL CODE OF UTTARAKHAND: A LEGAL & CONSTITUTIONAL ANALYSIS

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Manik Tindwani

## I. ABSTRACT

The Uniform Civil Code (UCC) in India, as envisioned in Article 44 of the Constitution, seeks to unify personal laws across diverse communities to ensure equality and justice. The Uttarakhand UCC, 2024, represents the first state-level implementation of this vision, sparking intense debate over its constitutionality, inclusivity, and social impact. This paper critically examines the Uttarakhand UCC's legal framework, highlighting its progressive elements such as prohibitions on polygamy and child marriage, equal inheritance rights, and mandatory registration of live-in relationships. However, it also exposes significant limitations, including exemptions for Scheduled Tribes, the perpetuation of gender biases in marriage age, and controversial regulatory provisions on personal relationships. The research emphasizes the Code's potential to conflict with central laws, infringe on fundamental rights, and undermine India's pluralistic ethos. By analyzing the Uttarakhand UCC in the context of Goa's Portuguese Civil Code and historical UCC debates, the paper underscores the challenges of implementing uniform laws in a diverse society. It advocates for gradual and inclusive reforms to address discriminatory practices in personal laws, promoting gender justice and social harmony while respecting cultural diversity. Ultimately, the paper calls for an iterative, participatory approach to UCC implementation, balancing equality and individual freedoms with India's constitutional values of secularism and diversity.

## II. KEYWORDS

Uniform Civil Code (UCC), Personal Law Reforms, Gender Justice, Legal Pluralism, Constitutional Analysis

## III. RESEARCH OBJECTIVES

The researcher has formulated the following research objectives:

- To analyze the legal and constitutional framework of the Uttarakhand UCC, 2024.
- To assess the societal and cultural implications of implementing a state-specific UCC.
- To compare the Uttarakhand UCC with existing personal laws and other UCC models, such as Goa's Civil Code.
- To propose recommendations for an inclusive and effective approach to personal law reforms in India.

#### IV. RESEARCH QUESTIONS

- What are the legal and constitutional challenges posed by the Uttarakhand UCC, 2024?
- How does the Uttarakhand UCC balance equality and cultural diversity in a pluralistic society?
- In what ways does the Uttarakhand UCC align with or diverge from other personal law frameworks in India?
- What are the potential pathways for implementing a uniform civil code that respects diversity and promotes social justice?

#### V. RESEARCH METHODOLOGY

This study adopts a doctrinal research methodology, focusing on the legal and constitutional aspects of the Uttarakhand UCC, 2024. Primary sources, including the text of the Uttarakhand UCC, statutory provisions, and constitutional articles, are analyzed to understand the Code's legal framework and implications. Key judicial pronouncements, such as the *Shah Bano case* and *Sarla Mudgal v. Union of India*, are examined to contextualize the UCC's role in personal law reforms.

Secondary sources, including scholarly articles, Law Commission reports, and comparative studies on Goa's Portuguese Civil Code, provide critical insights into the UCC's feasibility and societal impact. This research emphasizes a comparative analysis to identify the strengths and limitations of the Uttarakhand UCC in addressing legal uniformity and social justice. By synthesizing doctrinal and

comparative findings, the study proposes an inclusive and iterative approach to implementing a national UCC.

## VI. INTRODUCTION

The Uniform Civil Code (UCC) in India, referenced in Article 44 of the Constitution, remains a topic of debate. The recent Uttarakhand Uniform Civil Code, 2024, has sparked fresh discussions on the UCC's role in India's diverse society. This paper examines the Uttarakhand UCC's legal and societal effects, assessing its suitability as a national UCC template. It argues that despite its goal to establish equality, the Uttarakhand UCC's constitutionality, effect on personal laws, and societal reception present challenges. These issues call for a broader, more consultative resolution approach.

### A. Background on Uniform Civil Code (UCC) in India

#### Definition and Purpose of UCC

The Uniform Civil Code aims for a single, unified legal system, replacing varied personal laws based on religious doctrines. These laws cover marriage, divorce, inheritance, and adoption, applicable to all, regardless of faith.<sup>1</sup> Its main objective is to ensure legal equality and national unity by eliminating discrimination inherent in diverse personal laws.<sup>2</sup>

#### Mention in Article 44 of the Constitution

Article 44 of the Indian Constitution, under Directive Principles of State Policy (DPSP), envisions a uniform civil code for the entire country.<sup>3</sup> Despite its non-enforceability in court, it remains a critical guideline for state legislation on personal law matters.<sup>4</sup>

#### Brief Historical Overview

The UCC debate originated in British colonial times with the introduction of distinct personal laws, like the Hindu Widows' Remarriage Act, of 1856, and the Kazis Act, of

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<sup>1</sup> M. P. Jain, *Indian Constitutional Law* 1425 (Lexis Nexis 2018, 8th ed).

<sup>2</sup> *Sarla Mudgal v. Union of India*, AIR 1995 SC 1531.

<sup>3</sup> The Constitution of India, art. 44.

<sup>4</sup> *Pannalal Bansilal Patil v. State of Andhra Pradesh*, AIR 1996 SC 1023.

1880.<sup>5</sup> Post-independence, the Constituent Assembly included UCC as a DPSP, considering the issue's sensitivity and lack of consensus.<sup>6</sup> In the 1950s, Hindu personal laws were reformed, but others were not.<sup>7</sup> The Supreme Court, in cases like **Mohammad Ahmed Khan v. Shah Bano Begum** (1985) and **Sarla Mudgal v. Union of India** (1995), highlighted the UCC's necessity.<sup>8</sup> However, political and social apprehensions have hindered governmental action.

## **B. Significance of Uttarakhand in Implementing UCC**

Uttarakhand, a northern Indian state, recently adopted its own Uniform Civil Code.<sup>9</sup> This Code proposes a common legal framework for marriage, live-in relationships, adoption, succession, and other rights while exempting Scheduled Tribes. Uttarakhand's initiative is seen as a pivotal move, potentially inspiring other states and contributing to a national UCC.<sup>10</sup>

## **C. Overview of the Uttarakhand Uniform Civil Code, 2024**

The Uttarakhand Uniform Civil Code, 2024, pioneers a unified legal framework. It addresses personal laws about marriage, divorce, inheritance, and succession. This applies to all state residents, regardless of their religious or community affiliations. Enacted on February 7, 2024, the Code has stirred widespread interest and discussion nationwide.

## **D. Principal Elements of the Code**

### **Prohibition of Polygamy and Child Marriage**

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<sup>5</sup> Rohit De, "Mumtaz Bibi's Broken Heart: The Many Lives of the Dissolution of Muslim Marriages Act (2013)" 46(1) *The Indian Economic and Social History Review* 105.

<sup>6</sup> Shefali Jha, "Secularism in the Constituent Assembly Debates, 1946-1950", 37(30) *EPW* 3175 (2002).

<sup>7</sup> Werner Menski, *Hindu Law: Beyond Tradition and Modernity* 158 (Oxford University Press 2012).

<sup>8</sup> *Mohammad Ahmed Khan v. Shah Bano Begum*, AIR 1985 SC 945. ; *Sarla Mudgal v. Union of India*, AIR 1995 SC 1531.

<sup>9</sup> Mishra, I.. "Uttarakhand Assembly 'creates history' by passing Uniform Civil Code: Pushkar Dhami [WWW Document]." *The Hindu*. Available at <https://www.thehindu.com/news/national/uttarakhand-assembly-passed-the-uniform-civil-code-bill/article67821740.ece> (Last visited on February 4, 2024).

<sup>10</sup> "Legal Expert Prof Mustafa Speaks on UCC at Explained.Live Today" *The Indian Express* (February 26, 2024). Available at < <https://indianexpress.com/article/india/legal-expert-prof-mustafa-speaks-on-ucc-at-explained-live-today-9180811/> > ( Last visited on April 2, 2024).

A key aspect of the Uttarakhand UCC is its stance against polygamy and child marriage. Section 4 declares marriages void if a partner is already married.<sup>11</sup> This clause directly targets polygamy, allowed under certain religious laws.<sup>12</sup> It also establishes 21 as the minimum marriage age for men and 18 for women.<sup>13</sup> This effectively eliminates child marriage, a common issue in various communities.<sup>14</sup>

### **Equitable Inheritance Rights for Children**

The Code notably champions gender equality in inheritance and succession matters. It eliminates traditional property-sharing norms and introduces equal inheritance rights.<sup>15</sup> Under this, the deceased person's property is distributed equally among their offspring, regardless of gender, and their spouse and parents.<sup>16</sup> This approach contrasts with the Hindu Succession Act, of 1956, which favoured male heirs in property matters.<sup>17</sup>

### **Mandatory Registration of Live-in Relationships**

The Code also regulates live-in relationships by mandating registration. According to Section 387 read with Section 378, couples must register live-in arrangements within one month.<sup>18</sup> Non-compliance can lead to imprisonment or fines.<sup>19</sup> It defines a live-in relationship as a long-term, unregistered partnership between an adult man and a woman.<sup>20</sup> This measure aims to legally recognize and protect such unions, previously unrecognized under personal law.

### **Non-Uniformity in Marriage Age but Standardized Divorce Processes**

The Uttarakhand UCC provides the standard age of marriage as 21 for males and 18 for females as per Section 4(1)(iii) of the Code.<sup>21</sup> The Code has not increased the marital

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<sup>11</sup> Uttarakhand Uniform Civil Code, 2024, s. 4(1)(i).

<sup>12</sup> Flavia Agnes, "Hindu Men, Monogamy and Uniform Civil Code" 30(50) *EPW* 3238 (1995).

<sup>13</sup> Uttarakhand Uniform Civil Code, 2024, s. 4(1)(iii).

<sup>14</sup> Sushmita Pati, "Child Marriage in India: Factors and Problems" 4(4) *International Journal of Science and Research* 2993 (2015).

<sup>15</sup> Uttarakhand Uniform Civil Code, 2024, s. 49.

<sup>16</sup> Uttarakhand Uniform Civil Code, 2024, s. 51.

<sup>17</sup> Hindu Succession Act, 1956, s. 6.

<sup>18</sup> Uttarakhand Uniform Civil Code, 2024, ss. 387, 378.

<sup>19</sup> Uttarakhand Uniform Civil Code, 2024, s. 387.

<sup>20</sup> Uttarakhand Uniform Civil Code, 2024, s. 3 (4)(b).

<sup>21</sup> Uttarakhand Uniform Civil Code, 2024, s. 4(1)(iii).

age of women to 21 as is recommended numerous times, this not only raises questions on the object of the Code to ensure gender equality but also shows non-consideration of the impact of early marriages on women's health by the legislature.<sup>22</sup> However, the Code also introduces a uniform divorce procedure. Couples can petition a court for divorce on grounds like adultery, cruelty, or irretrievable breakdown.<sup>23</sup> A divorce decree is issued if the court is convinced of the marriage's irreparable dissolution.<sup>24</sup> Thus, to some extent, the Code is providing equal protection of law to both men and women but marital age is a debatable issue.

### **The Uttarakhand Uniform Civil Code Exempts Scheduled Tribes**

These tribes represent roughly 3% of the state's populace.<sup>25</sup> Section 2 clarifies the Code's non-applicability to these tribes.<sup>26</sup> This exemption acknowledges their unique customs. Tribal practices enjoy constitutional protection.<sup>27</sup> And, not only legally but politically restraining practices of the Tribes can lead to public processions and campaigns just as is being witnessed in Ladakh since it has been designated as a Union Territory.

### **E. The Uttarakhand UCC: Goals and Justification**

Uttarakhand's UCC aims for a singular, inclusive legal structure. It covers personal matters, treating all citizens equally regardless of faith. The Code's preamble highlights its objectives: *"to govern and regulate the laws relating to marriage and divorce, succession, live-in relationships, and matters related thereto"*.<sup>28</sup> It seeks to abolish discrimination stemming from varied personal laws.<sup>29</sup> The government insists on a

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<sup>22</sup> Tripathy A and Mishra PS, "Raising Age of Marriage: A Better Deal for Women" *Deccan Herald* (December 20, 2021). Available at <<https://www.deccanherald.com/opinion/raising-age-of-marriage-a-better-deal-for-women-1063011.html>> (Last visited on April 2, 2024).

<sup>23</sup> Uttarakhand Uniform Civil Code, 2024, s. 25.

<sup>24</sup> Uttarakhand Uniform Civil Code, 2024, s. 25(1)(ix).

<sup>25</sup> "What Is the Current Population of Uttarakhand?" (Sex Ratio & Literacy rate 2024). Available at <<https://www.census2011.co.in/census/state/uttarakhand.html>> . (Last visited on April 2, 2024).

<sup>26</sup> Uttarakhand Uniform Civil Code, 2024, s. 2(1).

<sup>27</sup> The Constitution of India, art. 342.

<sup>28</sup> Uttarakhand Uniform Civil Code Act, 2024, preamble.

<sup>29</sup> Uttarakhand Uniform Civil Code Act, 2024, Preamble.

UCC to guarantee equal legal treatment. It aims to enhance social harmony and cohesion.<sup>30</sup>

Article 44 of India's Constitution inspired Uttarakhand's UCC. It urges the state to establish a uniform code for all Indian citizens.<sup>31</sup> This Directive Principle mirrors the founding fathers' vision. They aspired to a unified legal system covering marriage, divorce, inheritance, and succession.<sup>32</sup> Nevertheless, UCC implementation is controversial. Diverse personal laws and some religious groups, especially Muslims, oppose it.<sup>33</sup>

The Uttarakhand government advocates the UCC for gender justice and women's rights.<sup>34</sup> It criticizes current personal laws for bias and reinforcing patriarchal norms.<sup>35</sup> For example, Muslim personal law allows men unilateral divorce but compels women to seek legal action as practices like Nikah Halala, and Triple Talaq have been condemned by the Apex Court of the country as well, and this Code aims to provide "equal protection of the law" to Muslim women as well.<sup>36</sup> In Hindu Succession Law, daughters inherit less than sons.<sup>37</sup> The UCC intends to correct these imbalances with a gender-neutral legal framework.

## F. Code's Limitations: Exemptions and Exclusions

The Uttarakhand UCC, while aiming for uniformity, has specific limitations. Scheduled Tribes members are exempt under Section 2.<sup>38</sup> This is due to their unique

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<sup>30</sup> Online E, "What's Uniform Civil Code: What Does Constitution Say about UCC and Why It's so Controversial in India?" *Economic Times* (June 29, 2023). Available at < <https://m.economictimes.com/news/how-to/what-is-uniform-civil-code-what-does-constitution-say-about-it-why-its-such-a-controversial-topics-in-india/articleshow/101348565.cms> >. (Last visited on April 2, 2024).

<sup>31</sup> The Constitution of India, art. 44.

<sup>32</sup> Shefali Jha, "Secularism in the Constituent Assembly Debates, 1946-1950", 37(30) *EPW* 3175 (2002)..

<sup>33</sup> M. P. Jain, *Indian Constitutional Law* 1425 (Lexis Nexis 2018, 8th edn).

<sup>34</sup> ANI, "'Uniform Civil Code Will Be Implemented at Earliest,' Says Uttarakhand CM Pushkar Singh Dhama" *Times Of India* (March 24, 2024). Available at < <https://timesofindia.indiatimes.com/india/uniform-civil-code-will-be-implemented-at-earliest-says-uttarakhand-cm-pushkar-singh-dhama/articleshow/108747739.cms> >. (Last visited on April 2, 2024)

<sup>35</sup> Madhu Mehra, "Uniform Civil Code and Gender Equality" 33(24) *EPW* 1325 (1998).

<sup>36</sup> *Mohd. Ahmed Khan v. Shah Bano Begum*, AIR 1985 SC 945.

<sup>37</sup> Hindu Succession Act, 1956, s. 6.

<sup>38</sup> Uttarakhand Uniform Civil Code, 2024, s. 2(1).



customs, constitutionally protected.<sup>39</sup> Critics, however, see this as a contradiction to UCC's purpose and the bill is affecting the minority populace especially "Muslims".<sup>40</sup> They highlight that tribal women face practices like polygamy and child marriage, which the UCC prohibits.<sup>41</sup>

The Code also excludes marriages under the Special Marriage Act, 1954, or other existing laws as those married under these laws won't fall under the UCC. Section 390 is silent on the overriding effect of the Code on such central legislations rather it has used the phrase "*any law (statutory or otherwise), practice, custom, or usage in force in the state immediately before the commencement of this Code relating to the matters covered by this code, shall cease to have effect within the territory of the State*" with the intent to cease effect of other laws related to the matters specific in the Code.<sup>42</sup> This is seen as a loophole, allowing some to bypass the UCC and stick to personal laws. Questions arise about the UCC's effectiveness in advancing gender equality and social justice.

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<sup>39</sup> The Constitution of India, art. 342.

<sup>40</sup> Editorial, "Legal Expert Prof Mustafa Speaks on UCC at Explained.Live Today" *The Indian Express* (February 26, 2024). Available at <<https://indianexpress.com/article/india/legal-expert-prof-mustafa-speaks-on-ucc-at-explained-live-today-9180811/>>. (Last visited on April 2, 2024).

<sup>41</sup> Amrit Srinivasan, "Uttarakhand's Uniform Civil Code Is a mere extension of Highly controlled lives Indian women lead" *The Wire*. Available at <<https://thewire.in/law/uttarakhands-uniform-civil-code-is-a-mere-extension-of-highly-controlled-lives-indian-women-lead>>. (Last visited on April 2, 2024).

<sup>42</sup> Uttarakhand Uniform Civil Code, 2024, s. 390(1).

*A fortiori*, the Uttarakhand UCC, 2024, marks a pivotal move. It aligns common laws on marriage, divorce, inheritance, and succession. Progressive elements include bans on polygamy and child marriage, equal property rights, and compulsory registration of live-in relationships. Yet, the Code's exemptions and exclusions may impede its goals. The debate is intense, with supporters praising it as a milestone for gender justice and unity, and detractors questioning its constitutional validity and impact on religious diversity. Uttarakhand's initiative could influence similar reforms elsewhere, setting a precedent for nationwide changes.

## VII. QUESTIONABLE CONSTITUTIONAL VALIDITY OF UTTARAKHAND'S UCC

The Uttarakhand Uniform Civil Code (UCC), 2024, has sparked debates over its constitutional soundness. The Code aims for equality in personal laws. Yet, it faces legal hurdles questioning its alignment with India's Constitution. This analysis delves into the Uttarakhand UCC's dubious constitutional legitimacy. It focuses on three critical issues: the state's ambiguous authority under Article 44 to implement a UCC, possible breaches of fundamental rights, and the Code's potential to supersede central and personal laws.

### A. Uncertainty Over State's Authority to Implement UCC under Article 44 (DPSP)

The Uttarakhand UCC raises a fundamental constitutional query. It questions whether a state can legislate a uniform civil code under Article 44. This article, in the Directive Principles of State Policy (DPSP), urges, "The State shall strive for a uniform civil code across India".<sup>43</sup> The confusion stems from how "State" is interpreted.

The Supreme Court has consistently interpreted "State" in Article 44 as Parliament, not state legislatures.<sup>44</sup> In **Pannalal Bansilal Patil v. State of Andhra Pradesh** (1996), the Court remarked, "Article 44's aspiration for a uniform civil code isn't a directive.

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<sup>43</sup> The Constitution of India, art. 44.

<sup>44</sup> *Pannalal Bansilal Patil v. State of Andhra Pradesh*, AIR 1996 SC 1023; *Sarla Mudgal v. Union of India*, AIR 1995 SC 1531; *Lily Thomas v. Union of India*, AIR 2000 SC 1650.

It's a hope. This provision, read with Part IV, especially Article 37, is non-enforceable but crucial in governance".<sup>45</sup> Article 37 notes that the DPSP cannot be enforced by courts, yet they are essential in governing the country.<sup>46</sup>

The Court's reading implies Parliament, not state legislatures, should pursue a UCC. This is reinforced since personal laws, which the UCC intends to unify, are in the Concurrent List (Entry 5) of the Seventh Schedule.<sup>47</sup> Both Parliament and states can legislate on Concurrent List items. But under Article 254, if there's a conflict, the central law prevails.<sup>48</sup>

The Uttarakhand government cites Entry 5 of the Concurrent List to back its UCC enactment power. However, this stance is questionable against the Supreme Court's reading of Article 44 and the predominance of central laws in the Concurrent List. Critics argue that the Uttarakhand UCC, as it stands, may fail judicial scrutiny on legislative competence grounds.

### **B. Potential Infringement on Fundamental Rights of Liberty, Privacy, and Equality**

The Uttarakhand UCC poses significant constitutional issues. It potentially breaches citizens' fundamental rights, particularly liberty, privacy, and equality. Several of its provisions seem incompatible with rights stated in Part III of the Constitution. One contentious part of the Uttarakhand UCC is compulsory marriage and live-in relationship registration.<sup>49</sup> Section 6 read with section 10(1) mandates registering marriages within 60 days post commencement.<sup>50</sup> Section 378 read with section 381 requires registering live-in relationships.<sup>51</sup> Non-compliance leads to penal actions, including jail time and fines.<sup>52</sup>

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<sup>45</sup> *Pannalal Bansilal Patil v. State of Andhra Pradesh*, AIR 1996 SC 1023, para. 42.

<sup>46</sup> The Constitution of India, art. 37.

<sup>47</sup> The Constitution of India, Seventh Schedule, List III, Entry 5.

<sup>48</sup> The Constitution of India, art. 254.

<sup>49</sup> Uttarakhand Uniform Civil Code, 2024, ss. 6, 378, & 387.

<sup>50</sup> Uttarakhand Uniform Civil Code, 2024, s. 6(1).

<sup>51</sup> Uttarakhand Uniform Civil Code, 2024, s. 378(1).

<sup>52</sup> Uttarakhand Uniform Civil Code, 2024, ss. 17, 387.

This compulsory registration has sparked debates. Critics label it a privacy invasion and a liberty right breach. The Supreme Court acknowledges privacy as a fundamental right under Article 21.<sup>53</sup> In **K.S. Puttaswamy v. Union of India** (2017), it ruled privacy includes intimate personal choices like partner selection.<sup>54</sup> The Court stressed state non-interference unless public interest demands.<sup>55</sup> The Uttarakhand UCC's marriage and live-in relationship registration seems a disproportionate personal life intrusion. It violates both privacy and liberty rights under Article 21. The attached penal risks for non-registration exacerbate these rights violations.

Another questionable Uttarakhand UCC aspect concerns equality. It selectively exempts Scheduled Tribes (STs) members.<sup>56</sup> Section 2 states this Code doesn't apply to STs, referring to Articles 366(25), 342, and Part XXI of the Constitution.<sup>57</sup> This STs exemption aims to protect their customs. However, it raises selective application concerns, impacting legal equality. Article 14 ensures equality, forbidding discrimination based on religion, race, caste, sex, or birthplace.<sup>58</sup> This exemption might be viewed as reverse discrimination, contradicting equality principles.<sup>59</sup> Additionally, this exemption challenges the uniform civil code concept. The UCC aims for uniform personal laws for all citizens, irrespective of religion or community. Yet, it paradoxically enforces differential treatment based on tribal identity.

### **C. The Code's Potential Conflict with Central and Personal Laws**

The Uttarakhand UCC could clash with central laws and personal laws. Personal laws are under the Concurrent List, as previously noted. If a state law conflicts with a central law on a Concurrent List topic, the central law dominates.<sup>60</sup> The Code seems to overrule various central and personal laws. For example, its marriage and divorce rules conflict with the Hindu Marriage Act, 1955, and the Special Marriage Act, 1954.

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<sup>53</sup> *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1; *R. Rajagopal v. State of Tamil Nadu*, (1994) 6 SCC 632; *People's Union for Civil Liberties v. Union of India*, (1997) 1 SCC 301.

<sup>54</sup> *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1, para. 169.

<sup>55</sup> *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1, para. 180.

<sup>56</sup> Uttarakhand Uniform Civil Code, 2024, s. 2.

<sup>57</sup> *Ibid.*

<sup>58</sup> The Constitution of India, art. 14.

<sup>59</sup> The Constitution of India, art. 14.

<sup>60</sup> The Constitution of India, art. 254(1).

These are central laws for matrimonial issues.<sup>61</sup> The Code's inheritance and succession clauses also conflict with the Hindu Succession Act, 1956, and the Indian Succession Act, 1925.<sup>62</sup> This overruling raises questions about its constitutional soundness. Article 254(1) states that if a state law contradicts a central law, the central law prevails. The conflicting state law becomes void to the extent of the clash. The Uttarakhand UCC's conflict with central personal laws could make the state law void. This might lead to legal confusion and undermine the purpose of a uniform civil code.

Furthermore, the Code's impact on personal laws might infringe on religious freedom under Article 25. Personal laws often reflect religious beliefs, especially in marriage, divorce, and inheritance.<sup>63</sup> A uniform civil code ignoring these religious aspects could be seen as violating religious freedom. The Supreme Court in **Shayara Bano v. Union of India** (2017) upheld that personal laws are protected under Article 25 unless they breach constitutional principles.<sup>64</sup> The Court also emphasized the need for legislative consultation in reforming personal laws. The Uttarakhand government's rapid UCC enactment without ample public consultation might fail judicial scrutiny under Article 25. Its potential infringement on religious freedom raises doubts about its constitutional validity.

The Uttarakhand UCC faces constitutional hurdles regarding its validity and alignment with fundamental rights. Issues include the Code's conflict with central and personal laws and potential infringement on liberty, privacy, and equality. The UCC's constitutionality will likely face court challenges. The outcome will influence Uttarakhand UCC's future and set a precedent for similar laws. The Uttarakhand government should address these constitutional issues. It should involve diverse groups in the UCC implementation process. Rushing a uniform civil code could harm social harmony and national integration.

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<sup>61</sup> Hindu Marriage Act, 1955; Special Marriage Act, 1954.

<sup>62</sup> Hindu Succession Act, 1956; Indian Succession Act, 1925.

<sup>63</sup> Werner Menski, *Hindu Law: Beyond Tradition and Modernity* 158 (Oxford University Press 2012).

<sup>64</sup> *Shayara Bano v. Union of India*, (2017) 9 SCC 1, para. 198.

## VIII. CONTROVERSIAL PROVISIONS REGULATING PERSONAL RELATIONSHIPS AND RAISING EQUALITY CONCERNS

The Uttarakhand Uniform Civil Code (UCC) of 2024 is hailed as forward-thinking law. It seeks to unify personal laws and promote equality. Yet, a detailed analysis uncovers issues in its clauses. These issues impact personal freedom, privacy, and equal rights. The focus is on contentious areas of the Uttarakhand UCC. These include mandatory registration of marriages and live-in relationships, unchanged marriage age, limited women's property rights, absence of advanced provisions, and selective tribal exemptions.

### A. Compulsory Registration of Marriages and Live-in Ties

The Uttarakhand UCC controversially mandates registering marriages and live-in ties.<sup>65</sup> According to Section 6 read with Section 10(1), all marriages must be registered within 60 days post-enactment.<sup>66</sup> Section 387 read with sections 378 & 381 of the Code requires registering live-in relationships within a month.<sup>67</sup> Non-compliance leads to penalties, including jail and fines.<sup>68</sup>

#### Privacy and Autonomy Breach

Compulsory registration is seen as infringing on privacy and autonomy. Article 21 of the Constitution guards privacy, including partnership choices.<sup>69</sup> The state's obligatory registration appears excessively intrusive. Additionally, this mandate contradicts the informal nature of live-in relationships, reducing personal choice.

#### Excessive Penalties and Police Role

The penalties for non-registration under the Uttarakhand UCC are excessive and invite potential harassment. Section 17 stipulates up to three months' jail and Rs. 10,000 fine for unregistered marriages.<sup>70</sup> A similar penalty applies to unregistered live-

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<sup>65</sup> Uttarakhand Uniform Civil Code, 2024, ss. 6, 378.

<sup>66</sup> Uttarakhand Uniform Civil Code, 2024, s. 6(1).

<sup>67</sup> Uttarakhand Uniform Civil Code, 2024, s. 387(1).

<sup>68</sup> Uttarakhand Uniform Civil Code, 2024, ss. 17, 378(3).

<sup>69</sup> *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.

<sup>70</sup> Uttarakhand Uniform Civil Code, 2024, s. 17(1).

in relationships under Section 387(1).<sup>71</sup> These rules not only criminalize personal decisions but also risk moral policing and unwarranted police involvement.

### **Criminalization for Non-Registration and False Data**

The Code also criminalizes not registering and giving false information.<sup>72</sup> Section 17(2) and Section 387(1) penalize false information in marriage and live-in relationship registration, respectively.<sup>73</sup> These provisions raise concerns about misuse by authorities and could intimidate, especially marginalized individuals or those in non-traditional relationships. This fear might deter people from entering relationships, impacting their personal freedom.

### **Dampening Relationship Choices**

The Uttarakhand UCC could discourage non-conventional relationships.<sup>74</sup> Its rules, coupled with penalties, dissuade people from defying societal norms. This is particularly significant for live-in relationships, viewed as non-traditional. The Code's regulation of these relationships contradicts their inherent choice-based nature.

### **Neglecting LGBTQ+ Rights**

The Code's registration requirements overlook the LGBTQ+ community's rights. It defines marriage as a heterosexual union, excluding same-sex marriages.<sup>75</sup> The definition of live-in relationships also ignores same-sex couples.<sup>76</sup> This exclusion perpetuates sexual orientation discrimination and denies LGBTQ+ individuals equal legal protection.

### **Excessive Registrar Authority**

The Uttarakhand UCC grants registrars substantial control in registration matters.<sup>77</sup> Section 13 authorizes registrars to reject defective applications or prohibited

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<sup>71</sup> Uttarakhand Uniform Civil Code, 2024, s. 387(3).

<sup>72</sup> Uttarakhand Uniform Civil Code, 2024, ss. 17(2), 387(2).

<sup>73</sup> Uttarakhand Uniform Civil Code, 2024, s. 17(2), s. 387(2).

<sup>74</sup> Flavia Agnes, "Uttarakhand's UCC: Uniformity or Majoritarianism?" 59(7) *Economic & Political Weekly* 12-13.

<sup>75</sup> Uttarakhand Uniform Civil Code, 2024, s. 4.

<sup>76</sup> Uttarakhand Uniform Civil Code, 2024, s. 3 (4) (b).

<sup>77</sup> Uttarakhand Uniform Civil Code, 2024, s. 13, 15.

relationships. There have been no clarifications in the Code as to the grounds for rejecting the application or prohibiting the relationships. The Code's vague refusal criteria could lead to arbitrary registrar decisions. It also invades privacy, as registrars can probe personal details.

### **B. Static Marriage Age Threshold fueling Gender Bias**

Uttarakhand's Uniform Civil Code (UCC) controversially upholds a disparate marriage age: 21 for men, and 18 for women.<sup>78</sup> Current debates advocate equalizing the minimum age at 21, citing gender fairness. Yet, Uttarakhand UCC sidesteps this modernizing shift.

This age variance in marriage perpetuates gender disparities, echoing age-old patriarchal views. It implies premature marital readiness for women, curtailing their educational and professional growth opportunities. Uttarakhand's UCC, by maintaining this bias, contradicts its gender equality and legal uniformity objectives.

### **C. Inadequate Safeguards for Post-Marital Women's Property Rights**

Uttarakhand UCC inadequately secures post-marital property rights for women. It initiates reforms like equal ancestral property rights for daughters.<sup>79</sup> However, it neglects key areas like marital property rights and financial security post-divorce. The code excludes joint property ownership concepts and equitable asset division post-divorce. Lacking explicit marital property guidelines, it leaves such decisions to judicial discretion. This vagueness risks disadvantaging women, typically possessing lesser economic clout in marriages. Furthermore, the Uttarakhand UCC disregards women's unpaid household contributions. Overlooking the economic value of domestic work entrenches gender inequity, denying women fair marital asset division.<sup>80</sup>

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<sup>78</sup> Uttarakhand Uniform Civil Code, 2024, s. 4(1)(3).

<sup>79</sup> Uttarakhand Uniform Civil Code, 2024, s. 51.

<sup>80</sup> *Ibid.*



### **D. Omitted Aspects: Marital Rape, Adoption Rights**

The Uttarakhand UCC overlooks key reforms in areas like marital rape and adoption rights. It remains silent on marital rape, a highly debated issue in India. This omission perpetuates the archaic view of women as property, ignoring their rights to bodily integrity and sexual self-determination. The code also lacks a unified adoption framework, relying instead on varied personal laws. This absence of a secular, inclusive adoption policy fosters religious discrimination and hinders equal parental rights for all citizens.

### **E. Tribal Communities: Exemptions and Uniformity Concerns**

The Uttarakhand UCC's tribal exemptions attract criticism. Section 2 exempts Scheduled Tribes, preserving their customary practices. Though aimed at cultural preservation, it raises uniformity issues within the UCC. This selective approach contradicts the UCC's fundamental purpose. It paradoxically fosters inequality under the guise of promoting uniformity, spotlighting community-based legal disparities. The exemptions pose potential conflicts with the constitutional right to equality, as outlined in Article 14.

*A fortiori*, the Uttarakhand UCC's approach to personal laws is controversial, underscoring the complexities in a diverse setting like India. Its regulations on marriage and cohabitation, along with unaddressed gender biases, infringe on privacy and maintain gender inequality. Ignoring key issues like marital rape and uniform adoption laws reflects missed opportunities for social advancement. The exemptions for tribal communities further question the code's consistency.

A successful uniform civil code demands a fine balance: equality and uniformity alongside personal freedoms and cultural diversity. It requires broad consultation, respect for individual rights, and an appreciation of India's diverse fabric. In its current state, the Uttarakhand UCC fails to meet these criteria, necessitating substantial revisions to truly foster equality and social justice.

## IX. UNDEMOCRATIC LEGISLATIVE PROCESS AND LACK OF CONSULTATION

The recent passage of the Uttarakhand Uniform Civil Code (UCC), 2024, has stirred considerable debate. Criticisms target both its content and the legislative method used. Particularly, the process is seen as exclusionary and undemocratic. Key groups, like minorities and women, weren't properly consulted.

### A. Swift Passage with Insufficient Debate

The Code's rapid approval in the state legislature lacked thorough discussion.<sup>81</sup> Introduced on February 6, 2024, it was quickly passed by February 8. This expeditious approval of such a critical and divisive law raises questions about the integrity of democratic law making and the potential implications for personal liberties.

Spanning 200 pages, 392 sections, and 7 schedules, the Uttarakhand UCC is detailed and comprehensive. It aims to standardize personal laws across the state. The Code touches upon sensitive issues like marriage, divorce, and inheritance, significantly impacting citizens' private lives and religious practices. These critical matters warranted exhaustive examination and debate within the legislative assembly.

Yet, the Uttarakhand government expedited the Code's approval, allowing little time for legislators to scrutinize its details. This approach contradicts the essence of democratic discourse. Opposition parties claim they lacked sufficient time to review and address the Code's complexities. This absence of in-depth debate deprived legislators of the chance to fully assess the Code, propose modifications, and align it with constitutional norms and public expectations.

The rapid enactment of the Uttarakhand UCC Code also casts doubt on the government's motives, especially considering the proximity to upcoming state elections. It has sparked allegations of leveraging the Code for electoral gains and

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<sup>81</sup> Upadhyay S, "Uttarakhand Legislative Assembly passes Bill on 'Uniform Civil Code', Becomes first state to do so" *Live Law* (February 7, 2024). Available at < <https://www.livelaw.in/top-stories/uttarakhand-legislative-assembly-uniform-civil-code-2024-bill-becomes-first-state-248844> >. (Last visited on April 2, 2024).

religious polarization. This rushed approach not only supports these claims but also damages the legislative process's integrity.

## **B. Oversight in Skipping Committee Review for Uttarakhand UCC Code**

The enactment of Uttarakhand's UCC overlooks a key step: legislative committee scrutiny.<sup>82</sup> Uttarakhand's assembly has various standing committees.<sup>83</sup> They analyze Codes, offering insights and recommendations. Such committees are vital. They ensure thorough debate and engage experts on sensitive issues.

Yet, the Uttarakhand government bypassed this for the UCC Code. Its significant consequences and need for in-depth review were clear. Opposition and civil groups wanted it examined by a select committee. But the government advanced the Code without this critical evaluation.

This omission skipped a chance for a richer, informed discussion on the Code. These committees offer specialized knowledge and can consult experts and witnesses. They also broaden public involvement. They welcome input from minorities, women's groups, legal minds, and civil society.

Without this review, legislators missed out on a comprehensive analysis of the Code's merits and drawbacks. Such an analysis aids in making educated decisions and proposing amendments. The absence of this step weakens the legislative process and casts doubt on the government's dedication to democratic principles.

## **C. The Uttarakhand UCC Code: Lack of Substantial Public Dialogue**

The Uttarakhand UCC Code's introduction notably lacked significant public dialogue on its preliminary clauses. The state government claimed the UCC Code drew from a committee's suggestions. Yet, they haven't disclosed the committee's findings or the initial Code for broader input and commentary. This non-transparent, non-

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<sup>82</sup> PTI, "UCC bill be referred to select committee of House: Opposition". *The Hindu* (February 7, 2024). Available at <https://www.thehindu.com/news/national/other-states/ucc-bill-be-referred-to-select-committee-of-house-opposition/article67820742.ece>. (Last visited on April 6, 2024).

<sup>83</sup> National Informatics Center. (n.d.). Committees. Available at <https://ukvidhansabha.uk.gov.in/dpages/committees> (Last visited on April 2, 2024).

collaborative approach in law creation has attracted strong disapproval. Critics include opposition parties, civic bodies, and legal professionals.

In democratic law creation, public dialogue plays a crucial role. This is especially true for laws affecting citizens' personal lives and basic rights. It allows for incorporating views and worries of impacted groups in law crafting. This process also garners public trust and validates the legislative method and its laws.

Contrastingly, the Uttarakhand government's handling of the UCC Code has shown a preference for concealment and exclusion. There have been no public discussions or open calls for input on the Code's draft. The government's claimed consultation was restricted to a select group chosen by the state-appointed committee. Details about this committee's composition and operations remain unclear.

This lack of substantial public dialogue on the UCC Code has excluded citizens, especially from minority and women's groups. They missed the chance to voice opinions and concerns on the proposed legislation. It also hindered a thorough public debate on the Code's strengths and weaknesses and its potential societal and communal effects. This absence of public involvement casts doubts on the government's dedication to inclusive governance. It questions their respect for India's societal diversity and pluralism.

#### **D. Minority and Women's Concerns Overlooked**

The Uttarakhand UCC Code's formulation lacked democratic and consultative methods. This approach left issues of minorities and women's groups largely ignored. The Code's current version faces criticism for disregarding minority religious and cultural practices. It notably neglects Muslim customs and fails to meet women's specific legal needs.

In Uttarakhand, Muslims make up about 14% of the population.<sup>84</sup> They strongly oppose the UCC Code, seeing it as an infringement on religious liberty. It seemingly imposes a majoritarian perspective on their private affairs. Community leaders argue

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<sup>84</sup> Uttarakhand Hindu Muslim Population. Available at <https://www.census2011.co.in/data/religion/state/5-uttarakhand.html> (Last visited on April 2, 2024.)

that the Code overlooks the diversity within Islamic legal traditions. It attempts to standardize these varied practices into one uniform code. Concerns also centre around marriage, divorce, and inheritance provisions. These are claimed to clash with Islamic legal principles and cultural norms.

Women's rights groups also disapprove of the UCC Code. They highlight its insufficient focus on gender justice and addressing inequalities in personal laws.<sup>85</sup> The Code is accused of superficially promoting gender equality. Yet, it falls short in safeguarding women's rights in key areas like marital property and child custody. There's also a concern about how the Code treats live-in relationships. This could heighten women's vulnerability and risk of exploitation.

The Uttarakhand government's neglect in consulting minorities and women's groups during the UCC Code's creation led to unaddressed issues. There's been little effort to involve these stakeholders or consider their input. This exclusion has fostered alienation and mistrust among them. They feel sidelined, their rights sacrificed for uniformity

This lack of dialogue deprived the Code of valuable lived experiences and suggestions. Engaging with these communities could have made the UCC more responsive to their needs. Ignoring them missed an opportunity to create an inclusive and fair legal framework for personal issues.<sup>86</sup> *A fortiori*, the Uttarakhand UCC Code of 2024's enactment lacked democratic engagement and transparency. The Code's swift passage, without thorough debate or committee review, ignored minority and women's group concerns. This raises questions about the law's legitimacy and efficacy.

The process not only compromised the UCC's quality but also damaged public trust in law making. It appears the government prioritized its ideological agenda over genuine stakeholder dialogue. These procedural flaws in the UCC Code's enactment

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<sup>85</sup> Ara, I. "Uttarakhand Uniform Civil Code: Testing the waters?" *Frontline* (February 19, 2024). Available at <https://frontline.thehindu.com/news/uttarakhand-uniform-civil-code-controversy-over-womens-rights-and-minority-targeting-india/article67864614.ece>. (Last visited on March 31, 2024).

<sup>86</sup> *Ibid.*

set a negative precedent for future legislation on delicate topics. It fostered a culture of secrecy and haste, conflicting with democratic accountability and transparency principles.

It's crucial for the Uttarakhand government, and all Indian governments, to learn from these mistakes. They must commit to a more democratic, consultative, and inclusive legislative process. The validity and success of any law, especially one as impactful as a uniform civil code, rely not just on its content but also on its enactment process and its reflection of the people's will and aspirations.

## **X. Implications on Religious Freedom and Minority Rights**

The enactment of the Uttarakhand Uniform Civil Code (UCC) Code, 2024, has raised significant concerns about its implications on the religious freedom and minority rights guaranteed under the Constitution of India. The Code, which seeks to provide a uniform set of personal laws for all citizens of the state, irrespective of their religion, has been criticized for its potential to homogenize diverse cultural practices and impose majoritarian views on minority communities. This section critically examines the apprehensions surrounding the Uttarakhand UCC's impact on religious freedom and minority rights, focusing on the perceived imposition of majoritarian views, the lack of trust and political will to enact a genuinely secular UCC, and the need for balancing diversity and equality through inclusive reforms.

### **A. Apprehensions of Homogenization and Imposition of Majoritarian Views on All Communities**

One of the primary concerns raised by the critics of the Uttarakhand UCC is the apprehension that it may lead to the homogenization of diverse personal laws and cultural practices, and impose majoritarian views on all communities, particularly minorities. The Code, in its current form, has been accused of replicating the provisions of the Hindu Marriage Act, 1955, and disregarding the customary practices and personal laws of minority communities, especially Muslims.

#### **Replication of Hindu Marriage Act Provisions**

A close examination of the Uttarakhand UCC reveals that many of its provisions on marriage, divorce, and inheritance are similar, if not identical, to those found in the Hindu Marriage Act, 1955. For instance, the Code adopts the same grounds for divorce as the Hindu Marriage Act, including adultery, cruelty, desertion, and conversion to another religion. Similarly, the provisions on the restitution of conjugal rights and judicial separation are also borrowed from the Hindu Marriage Act.

The replication of Hindu Marriage Act provisions in the Uttarakhand UCC has led to accusations of the Code being a veiled attempt to impose Hindu personal law on all communities. Critics argue that the government, instead of formulating a genuinely secular and inclusive code, has simply transplanted the existing Hindu law and presented it as a uniform law for all. This approach, they contend, fails to take into account the diverse cultural and religious practices of minority communities and seeks to homogenize them under a majoritarian framework.

### **Disregard for Diverse Customs and Personal Laws**

The Uttarakhand UCC, in its attempt to provide a uniform set of personal laws, has been criticized for disregarding the diverse customs and personal laws of minority communities, particularly Muslims.<sup>87</sup> The Code, while claiming to promote equality and uniformity, fails to recognize and accommodate the pluralistic nature of Indian society and the cultural diversity that exists within and across religious communities.

Muslim personal law, which is based on the Sharia, has its distinct set of rules and practices governing marriage, divorce, inheritance, and other family matters.<sup>88</sup> These rules and practices, which have evolved over centuries, are an integral part of the religious and cultural identity of the Muslim community. The Uttarakhand UCC, by imposing a uniform set of rules on all communities, disregards these distinct practices and seeks to replace them with a homogenized code

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<sup>87</sup> Ara, I. "Uttarakhand Uniform Civil Code: Testing the waters?" *Frontline* (February 19, 2024). Available at <https://frontline.thehindu.com/news/uttarakhand-uniform-civil-code-controversy-over-womens-rights-and-minority-targeting-india/article67864614.ece>. (Last visited on March 31, 2024).

<sup>88</sup> Werner Menski, *"Hindu Law: Beyond Tradition and Modernity"* 277-278 (Oxford University Press 2012).

The disregard for diverse customs and personal laws in the Uttarakhand UCC has raised fears of the erosion of the religious and cultural practices of minority communities. The Code's provisions on marriage, divorce, and inheritance, which are at variance with the Islamic law, have been seen as an infringement on the religious freedom of Muslims. The Muslim community leaders have argued that the UCC, in its current form, violates their right to freely profess, practice, and propagate their religion, as guaranteed under Article 25 of the Constitution.<sup>89</sup>

### **Ambiguity Regarding the State's Power to Enact UCC**

Another factor contributing to the apprehensions surrounding the Uttarakhand UCC's impact on religious freedom and minority rights is the ambiguity regarding the state's power to enact a uniform civil code. As discussed in the previous section, there are conflicting views on whether a state legislature has the competence to enact a UCC under Article 44 of the Constitution, which falls under the Directive Principles of State Policy.

The ambiguity regarding the state's power to enact a UCC has raised concerns about the legitimacy and constitutionality of the Uttarakhand UCC. Critics argue that the Code, by seeking to provide a uniform set of personal laws, encroaches upon the legislative domain of the Parliament and violates the principle of federalism. They contend that matters of personal law fall under the Concurrent List of the Constitution, and any attempt by a state to unilaterally impose a uniform code would be unconstitutional.

The lack of clarity on the state's power to enact a UCC has also led to apprehensions about the selective and piecemeal implementation of the code across different states. The fear is that if each state were to enact its own version of the UCC, it would lead to a fragmented and inconsistent legal framework, defeating the very purpose of uniformity and equality. This would also create confusion and hardship for

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<sup>89</sup> Verma, L. "Uttarakhand's UCC Bill targets Muslim identity, deals a blow to country's diversity: AIMPLB". *The Indian Express* (February 6, 2024). Available at <https://indianexpress.com/article/political-pulse/uttarakhand-ucc-bill-target-muslim-identity-country-diversity-aimplb-9146890/>. (Last visited on March 26, 2024).



individuals who may be subject to different personal laws depending on their state of residence.

## **B. Lack of Trust and Political Will to Enact a Genuinely Secular UCC**

The concerns surrounding the Uttarakhand UCC's impact on religious freedom and minority rights are further compounded by the lack of trust and political will to enact a genuinely secular and inclusive uniform civil code. The history of the UCC debate in India has been marked by political and ideological polarization, with the issue being used as a tool for electoral mobilization and communal polarization.

The demand for a UCC has often been associated with the Hindu nationalist agenda of the Bharatiya Janata Party (BJP) and its ideological parent, the Rashtriya Swayamsevak Sangh (RSS). The BJP, in its election manifestos, has consistently promised to enact a UCC, citing the need for national integration and gender justice.<sup>90</sup> However, the party's critics have accused it of using the UCC as a political ploy to consolidate the Hindu vote and demonize the Muslim community.

The lack of trust in the political establishment to enact a genuinely secular UCC stems from the selective and inconsistent approach towards personal law reforms. While the Hindu personal laws were codified and reformed in the 1950s, the personal laws of minority communities, particularly Muslims, have largely remained untouched. The few attempts to reform Muslim personal law, such as the Shah Bano case and the subsequent Muslim Women (Protection of Rights on Divorce) Act, 1986, have been met with fierce resistance and political backlash.<sup>91</sup>

The Uttarakhand UCC, which was enacted by a BJP-led government, has also been viewed with suspicion and mistrust by the minority communities. The lack of transparency and consultation in the drafting process, the hasty passage of the Code, and the perceived imposition of majoritarian views have deepened the apprehensions about the government's true intentions. The Muslim community leaders have accused

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<sup>90</sup> Editorial, "UCC joins article 370, Ram temple as key issues for BJP in 2024" *Economic Times*. Available at <https://m.economictimes.com/opinion/et-commentary/ucc-joins-article-370-ram-temple-as-key-issues-for-bjp-in-2024-elections/articleshow/101331368.cms>. (Last visited on April 2, 2024)

<sup>91</sup> Vrinda Narain, "Women's Rights and the Accommodation of "Difference": Muslim Women in India", 8(1) *Southern California Review of Law and Women's Studies* 43, 50-51 (2001).

the government of using the UCC as a political tool to further marginalize and discriminate against minorities.<sup>92</sup>

The lack of political will to enact a genuinely secular UCC is also evident from the selective exemptions and exclusions in the Uttarakhand UCC. The Code, while claiming to provide a uniform set of personal laws for all, excludes the Scheduled Tribes from its purview. This selective exemption has been criticized as a political compromise to appease certain communities and avoid their backlash. It has also raised questions about the government's commitment to the principle of uniformity and equality before the law.

### **C. Need for Balancing Diversity and Equality through Inclusive Reforms**

The concerns surrounding the Uttarakhand UCC's impact on religious freedom and minority rights highlight the need for balancing diversity and equality through inclusive and participatory reforms. The goal of a uniform civil code, as envisioned in Article 44 of the Constitution, is to promote equality and social justice by eliminating discriminatory practices in personal laws. However, this goal cannot be achieved by imposing a homogenized code that disregards the cultural and religious diversity of the nation.

The process of personal law reforms must be based on a genuine and inclusive dialogue with all stakeholders, particularly the minority communities and women's groups.<sup>93</sup> The reforms must take into account the diverse customs and practices of different communities and seek to harmonize them with the principles of equality and non-discrimination. The aim should be to provide a minimum set of rights and protections to all individuals, irrespective of their religion, while allowing for cultural diversity and pluralism.

The Uttarakhand UCC, in its current form, falls short of this inclusive and participatory approach to personal law reforms. The Code, by replicating the Hindu

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<sup>92</sup> Werner Menski, *Hindu Law: Beyond Tradition and Modernity* 277-278 (Oxford University Press 2012).

<sup>93</sup> Gopika Solanki, *Adjudication in Religious Family Laws: Cultural Accommodation, Legal Pluralism, and Gender Equality in India* 287-288 (Cambridge University Press 2011).

Marriage Act provisions and disregarding the diverse customs and personal laws of minority communities, fails to strike a balance between diversity and equality. It also lacks the trust and legitimacy that can only be gained through a transparent and consultative process involving all stakeholders.

The way forward for personal law reforms in India must be based on a gradual and incremental approach, rather than a top-down imposition of a uniform code. The focus should be on identifying and eliminating specific discriminatory practices in existing personal laws, through a process of dialogue and consensus-building. The reforms must also be accompanied by efforts to promote gender justice, social awareness, and access to justice for all individuals, particularly women and marginalized communities.<sup>94</sup>

*A fortiori*, the Uttarakhand UCC Code, 2024, raises significant concerns about its implications on the religious freedom and minority rights guaranteed under the Constitution of India. The apprehensions of homogenization and imposition of majoritarian views, the lack of trust and political will to enact a genuinely secular UCC, and the need for balancing diversity and equality through inclusive reforms highlight the complex challenges involved in the process of personal law reforms in India.

The goal of a uniform civil code, while desirable in principle, cannot be achieved through a hasty and unilateral imposition of a homogenized code that disregards the cultural and religious diversity of the nation. The process of personal law reforms must be based on a genuine and inclusive dialogue with all stakeholders, particularly the minority communities and women's groups, and must seek to harmonize the principles of equality and non-discrimination with the diverse customs and practices of different communities.

The Uttarakhand UCC, in its current form, falls short of this inclusive and participatory approach to personal law reforms and risks further polarizing the already fragile social fabric of the nation. It is imperative that the government and civil

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<sup>94</sup> *Ibid.*

society engage in a constructive and compassionate dialogue to find a way forward that balances the goals of uniformity and equality with the imperatives of diversity and pluralism. Only then can India hope to achieve the vision of a just and inclusive society, where every individual, irrespective of their religion, enjoys the full range of rights and freedoms guaranteed under the Constitution.

## **XI. COMPARATIVE ANALYSIS WITH OTHER PERSONAL LAWS AND UCC ATTEMPTS**

India's long-standing debate on implementing the Uniform Civil Code (UCC) intensifies with the Uttarakhand UCC Code, 2024.<sup>95</sup> This Code has sparked fresh discussions, necessitating a comparative study of other personal laws and UCC efforts in India. This analysis scrutinizes Goa's 1867 Portuguese Civil Code. It compares it with Uttarakhand's UCC Code, extracting lessons from Goa's UCC experience. It also reviews past UCC debates in India. This includes the landmark Shah Bano case and the Muslim Women (Protection of Rights on Divorce) Act, of 1986. Additionally, it considers judicial statements and legislative requirements related to UCC. Lastly, it examines the Law Commission of India's recommendations on UCC's feasibility and desirability.

### **A. Goa's 1867 Portuguese Civil Code**

Since the Portuguese era, Goa has implemented a uniform civil code. The 1867 Portuguese Civil Code, extended to Goa in 1870, governs personal affairs. These include marriage, divorce, inheritance, and succession for all Goans, regardless of religion. This code, embodying gender equality and non-discrimination, is praised as a nationwide model.

### **Goa's Code and Uttarakhand's UCC Code: Similarities and Differences**

The Goa Civil Code and the Uttarakhand UCC Code both strive for uniform personal laws. However, their historical backgrounds, legal structures, and societal impacts differ significantly. Goa's Code, a Portuguese colonial legacy, has over 150 years of

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<sup>95</sup> Saumya Saxena, "Goa's Uniform Civil Code: A Model for India?" 53(14) *Economic & Political Weekly* 12 (2018).

history. The Uttarakhand UCC Code, in contrast, is a recent state legislation in independent India.

Both codes share a focus on gender equality and non-discrimination. They ensure equal rights in marriage, divorce, and inheritance for both genders. For instance, they endorse community property. Assets obtained during marriage are equally divided upon divorce. Additionally, they grant sons and daughters equal inheritance rights, irrespective of religion.

However, the scope and application of these codes vary. Goa's Code, while uniform, acknowledges specific customary practices. It allows exceptions based on religious or cultural norms. The following observations have been drawn by the researcher regarding Goa's UCC:<sup>96</sup>

- India's Former Chief Justice S.A. Bobde recently praised Goa's uniform civil code (UCC). This reignited discussion on the UCC. However, the 2018 Law Commission deemed a UCC impractical and undesirable. Unlike the 1941 Hindu Law Reforms Committee, no similar committee has focused on a UCC. Moreover, there's no UCC blueprint yet.
- The UCC, though beneficial, should be adopted gradually. The United States illustrates this with its state-specific constitutions and criminal laws. Such diversity hasn't weakened the country. In India, the UCC's role in national integrity is negligible.
- The Chief Justice called for a thorough examination of Goa's UCC. The Supreme Court's 2019 Jose Paulo Coutinho judgment highlighted Goa's UCC as a model. Justice Deepak Gupta supported applying Goa's Civil Code over the Indian Succession Act, of 1925, in certain cases.
- Goa's Portuguese Civil Code, 1867, remains a legacy of its colonial past. It excludes several central Indian laws. This raises questions about the concept of 'one nation, one law.' The Code respects Hindu customs under the Decree

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<sup>96</sup> Mustafa, F. "Explained: Why Goa's Civil Code is not as uniform as it is made out to be." *The Indian Express*. Available at <https://indianexpress.com/article/explained/why-goas-civil-code-is-not-as-uniform-as-it-is-made-out-to-be-7279365/>. (Last visited on April 3, 2024).

of Gentile Hindu Usages and Customs of Goa, 1880. It maintains the Hindu joint family concept, akin to a partnership.

- In Goa, Muslims follow both the Code and Shastri Hindu law. Interestingly, the Code doesn't allow marriage annulment based on religion.
- Goa's Civil Code covers various civil aspects. It begins with a religious invocation, unlike India's secular Constitution. The Code continues under the Goa, Daman, and Diu Administration Act, of 1962. In contrast, the Jammu & Kashmir Reorganisation Act, of 2019, abolished similar local customs.
- The Code's approach to marriage and property raises several issues. For instance, it treats Catholic and non-Catholic marriages differently. Marriages in churches can be annulled, but this isn't a ground for non-Christian annulments. The Code's provisions on divorce and adultery are gender-biased.
- The Code also recognizes Hindu customs, contrary to national laws. It views marriage as a contract, not a sacrament. This perspective could challenge traditional Indian views on marriage.
- Pre-nuptial contracts under the Code have intricate conditions. Management of marital properties is male-dominated. Women have limited control over assets.
- The Code's approach to succession and inheritance differs from Hindu laws. It limits testamentary freedom, echoing Muslim Personal Law principles.
- Nationally, Hindu laws vary regionally. South Indian customs differ from the Hindu Marriage Act, of 1955. Daughters only became coparceners in 2005. Gender bias persists in inheritance laws.
- Muslims and Christians also face non-uniform personal laws. Local customs in Nagaland, Meghalaya, and Mizoram are constitutionally protected. Land laws in several states discriminate against daughters.
- Before reforming religious laws, secular laws should become gender fair. Gradual reform, focusing on justice rather than uniformity, is advisable. A just code is preferable to a uniform one.

Contrastingly, Uttarakhand's UCC Code aims for more standardized personal laws. It limits exceptions or customary practices. This Code has faced criticism for potentially erasing cultural and religious diversity. It lacks the adaptability of Goa's Civil Code.

### **Lessons from Goa's UCC Experience**

Goa's UCC journey offers valuable insights, especially amid the UCC implementation debate. A critical lesson is the importance of historical context and societal acceptance for a successful code. The Goa Civil Code, deeply embedded in the state's cultural ethos, faces little resistance.

Another takeaway is the need for a flexible and adaptive UCC. Goa's Code evolved to align with the state's shifting social and cultural landscape. Its periodic amendments address various community-specific issues, maintaining its relevance and acceptance.<sup>97</sup>

Nevertheless, Goa's experience underscores the complexities of a UCC in India's diverse society.<sup>98</sup> While promoting gender equality and justice within Goa, the code is embroiled in broader debates over personal laws and minority rights. It has encountered criticism for potentially impinging on religious freedom and cultural autonomy

## **B. UCC Discussions and Efforts in India**

Since India's Constitution was drafted, the uniform civil code (UCC) has been a topic of national interest. Under Directive Principles, Article 44 urges the state to work towards a UCC for all. Yet, its realization remains controversial, often used for political gain and communal agendas.

### **Shah Bano Case and 1986 Muslim Women Act**

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<sup>97</sup> Vrinda Narain, "Women's Rights and the Accommodation of "Difference": Muslim Women in India", 8(1) *Southern California Review of Law and Women's Studies* 43, 50-51 (2001).

<sup>98</sup> The Constitution of India, art. 44.

The *Shah Bano case* marked a pivotal UCC effort in India, leading to the Muslim Women (Protection of Rights on Divorce) Act, of 1986.<sup>99</sup> This 1985 Supreme Court case focused on a divorced Muslim woman seeking maintenance under the Code of Criminal Procedure. The Court ruled that all citizens, regardless of religion, were subject to Section 125. Thus, a Muslim woman could claim maintenance post-iddat, the divorce waiting period.

The judgment was seen as a stride towards gender justice and UCC implementation. However, it faced backlash from the Muslim community, perceiving it as an infringement on religious rights. The Rajiv Gandhi-led government, under pressure from Muslim leaders, passed the 1986 Act. This Act negated the *Shah Bano* ruling and reinstated Muslim personal law in divorce and maintenance cases.<sup>100</sup> This case and subsequent law underlined the UCC's delicate nature in India. It revealed the tension between gender justice and religious freedom, and the political dynamics influencing personal law and minority rights.<sup>101</sup>

### **Judiciary and Legislative Responses**

The judiciary has repeatedly addressed personal law issues, advocating for a UCC. Notably, in *Sarla Mudgal v. Union of India* (1995), the Supreme Court deemed bigamy, allowed by some personal laws, a women's rights violation and called for a UCC.<sup>102</sup> *John Vallamattom v. Union of India* (2003) saw the Court challenge inheritance discrimination against Christians, pushing for UCC progress.<sup>103</sup>

Despite these calls, legislative response has been limited. Laws like the Special Marriage Act, of 1954, and the Indian Succession Act, of 1925, provide a secular framework but fail to fully resolve personal law disparities. Political reluctance and resistance from certain religious groups impede comprehensive UCC advancement.

### **Law Commission Reports and Views**

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<sup>99</sup> *Mohammad Ahmed Khan v. Shah Bano Begum*, AIR 1985 SC 945; Muslim Women (Protection of Rights on Divorce) Act, 1986.

<sup>100</sup> Muslim Women (Protection of Rights on Divorce) Act, 1986.

<sup>101</sup> Flavia Agnes, "Hindu Men, Monogamy and Uniform Civil Code" 30(50) *EPW* 3238 (1995).

<sup>102</sup> *Sarla Mudgal v. Union of India*, AIR 1995 SC 1531.

<sup>103</sup> *John Vallamattom v Union of India*, (2003) 6 SCC 611.



The Law Commission of India has significantly influenced the UCC debate, issuing multiple reports and suggestions. Its 14th Report (1958) led to Hindu personal law codification, resulting in the Hindu Marriage Act, of 1955, and others.<sup>104</sup> Yet, it didn't advocate for a universal civil code, citing India's diverse personal laws.

Its 21st Report (2018) revisited the UCC, analyzing personal laws' impact on gender justice and social harmony.<sup>105</sup> The Commission concluded that a UCC was "neither necessary nor desirable at this stage," favoring incremental personal law reforms. It emphasized the need for broad consensus before any legislative changes.

These recommendations received mixed responses. Some applauded the Commission's practical approach to personal law reform, while others criticized its avoidance of a full-fledged UCC. The report was a blow to UCC advocates, who favored a more assertive implementation strategy.

Comparing Goa's Portuguese Civil Code with India's UCC efforts offers valuable insights. Goa's UCC experience, successful in promoting gender equality and social justice, underscores the importance of context, acceptance, and adaptability. The Shah Bano case and subsequent legislation illustrate political and ideological divides in India's personal law discourse. Judicial decisions and the Law Commission's advice highlight the need for a nuanced, inclusive reform approach. This approach should respect gender justice and religious freedom, and aim for consensus and trust among various communities.

The Uttarakhand UCC Code signifies an important, yet imperfect, state-level UCC effort. It aims for equality and uniformity in personal laws but lacks inclusivity and adaptability. Its potential to diminish cultural and religious diversity, enforce a majoritarian personal law view, and impact individual rights poses constitutional and legitimacy questions.

Moving forward, India's personal law reforms, as advised by the Law Commission and other experts, should be gradual and issue-specific, rather than imposing a

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<sup>104</sup> Law Commission of India, 114<sup>th</sup> Report of Reform in Family Law (1958).

<sup>105</sup> Law Commission of India, 21<sup>st</sup> Report on Consultation Paper on Reform of Family Law (2018).

uniform code. This requires widespread consultation, including with religious groups, women's organizations, and civil society. Efforts should also be made to enhance gender justice, social equity, and access to justice within existing personal laws<sup>106</sup>. Ultimately, the UCC's aim in India should be a just, equal, and harmonious society, balancing uniformity and diversity, individual and group rights, and legal reforms with social change. The Uttarakhand UCC Code, despite its flaws, highlights the journey ahead in this pursuit.

## XII. CONCLUSION AND SUGGESTIONS

### A. Dissecting Uttarakhand's Uniform Civil Code Issues

The 2024 Uttarakhand Uniform Civil Code (UCC) marks a pivotal move towards India's constitutional aim of a universal civil code, as defined in Article 44. Yet, a thorough examination highlights multiple legal and social concerns. These revolve around its constitutional legitimacy, inclusivity, and societal reception.

Legally, the Uttarakhand UCC confronts questions about its constitutional grounding and the state's authority to enact such legislation. Confusion over-interpreting Article 44 and its advisory nature is problematic. The overlapping powers of the Central and state governments on personal law also create legal uncertainties. Further, potential violations of fundamental rights, especially freedom of religion and equality, present significant constitutional challenges.<sup>107</sup>

The Code's controversial rules on personal relationships, like compulsory marriage and live-in relationship registration, spark privacy, autonomy, and personal choice issues. Criminal penalties for non-compliance exacerbate these issues. Selective exemptions for groups like Scheduled Tribes conflict with the uniformity principle, raising discrimination concerns.

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<sup>106</sup> *Ibid.*

<sup>107</sup> Vishwanath, A. "Uttarakhand Uniform Civil Code: Registration of live-ins, jail term raise questions of privacy & liberty". *The Indian Express* ( February 7, 2024). Available at <https://indianexpress.com/article/explained/explained-law/uttarakhand-uniform-civil-code-registration-of-live-ins-jail-term-raise-questions-of-privacy-liberty-9147711/> . (Last visited on March 26, 2024)

Socially, the Code faces criticism for not fully considering Uttarakhand's diverse religious and cultural makeup. It seems to mirror Hindu personal law, neglecting minority customs and practices. This leads to fears of cultural uniformity and majoritarianism. The Code's swift enactment without ample public engagement has weakened trust among various groups.

Comparing Goa's Portuguese Civil Code and India's historical UCC debates reveals the intricacies of applying a uniform code in a diverse society. Goa's experience highlights the role of history, societal acceptance, and flexibility. The Shah Bano case and subsequent political reactions illustrate the ideological divides affecting personal law discussions. The Law Commission advocates for gradual, inclusive personal law reforms, advising against a hasty UCC implementation.

### **B. Significance of Broad Public Discussion on UCC**

The Uttarakhand UCC's journey highlights the need for extensive public dialogue. It also points to the necessity for a consensus on India's uniform civil code. Implementing UCC, with its significant impact on personal laws and fundamental rights, demands careful consideration. Such a step can't be rushed or done single-handedly. It calls for a methodical and inclusive approach, involving diverse groups. These include religious factions, women's organizations, legal authorities, and civil society bodies.

Debates around UCC should transcend simple black-and-white arguments. The focus should be on comprehending the intricate nature of India's personal laws. This requires acknowledging the valid concerns and ambitions of various communities. Simultaneously, it's crucial to maintain constitutional ideals of fairness, non-discrimination, and gender justice. This discussion should be grounded in factual data, comparative studies, and real-life experiences of those influenced by personal laws.

Developing a consensus on UCC should aim for a society that is fair and just. In such a society, everyone's rights and freedoms are safeguarded and championed. This process should be rooted in constitutional ethics, secularism, and legal governance. It

should avoid being swayed by majority rule or political convenience. Building this consensus demands genuine negotiations, balanced compromises, and appropriate adjustments. Yet, this must not dilute fundamental principles of human respect and equal citizenship.

### C. Recommendations for Progress

Analyzing the Uttarakhand UCC Code reveals key steps ahead. Both state and national UCC enactment needs democratic, inclusive methods, respecting rights and diversity. Vital suggestions include:

- **In-depth Revision of Uttarakhand UCC Code:** The state should thoroughly review this Code. Involve diverse groups in the consultation process, like minorities, women, and legal authorities. Amend to eliminate rights-infringing elements. Ensure it upholds cultural and religious multiplicity.
- **Gradual, Focused Personal Law Amendments:** UCC's application shouldn't be abrupt and uniform. Better to progressively refine existing personal laws. Tackle discrimination and inequality. Use legislative changes, court rulings, and community efforts. Assess real-life situations and varied stakeholder needs.
- **Enhancing Justice Access and Legal Support:** Robust justice and legal aid systems are crucial for personal law reforms, including UCC. Upgrade judicial systems, and add more family courts. Train judges and legal professionals thoroughly. Focus particularly on justice for women, marginalized groups, and isolated regions.
- **Fostering Gender Justice and Empowerment:** UCC discussions should aim at gender justice and empowerment. Reform personal laws with women's rights at the forefront. Women often face the most discrimination. Employ legal, educational, economic, and social strategies to dismantle patriarchal systems.
- **Consensus-Building via Dialogue:** UCC progression needs consensus, achieved through ongoing discussions. Governments, societies, and religious communities should collaborate respectfully. This dialogue should honor

constitutional values, human rights, and gender equality, considering the nation's diversity.

*A fortiori*, the Uttarakhand UCC Code, 2024, is a step towards a uniform civil code but has legal and social issues needing correction. A careful, inclusive, consensus-driven approach is essential, respecting constitutional rights and diversity. Progress lies in piecemeal personal law reforms, better justice and legal support, gender justice promotion, and consensus via dialogue. This approach will move India towards a society of justice, equality, and harmony, safeguarding individual rights regardless of religion, caste, or gender.