
UNIFORM CIVIL CODE IN CONTEMPORARY INDIA: CONSTITUTIONAL CHALLENGES AND IMPLICATIONS OF THE UTTARAKHAND LEGISLATION

Anshika Tomar, Amity Institute of Advanced Legal Studies, Amity Law School, Noida

ABSTRACT

Uniform Civil Code, known as “UCC” is a directive principle mentioned in our Constitution which is enshrined under Part IV Article 44. It states that “the state shall endeavour to secure for the citizens a uniform civil code throughout the territory in India.” The framers deliberately put UCC in the Directive principles because at the time of Independence we were not equipped with the administrative machinery and people were scared to lose their freedom of religion as there were many misconceptions about the same however today, after 78 years of independence UCC is still considered as a tool to take away the freedom of religion. There are many issues that revolves around the Implementation of UCC which are regarding people’s faith, marriage, adoption, live in relationships and privacy concerns which comes with compulsory registration under UCC, whether judicial review should be done or not, under Article 14, 21, 25,26,27 and 28, people will be governed by same law and not their own personal laws which brings us to the main concern that majority’s law will be imposed upon the minority, however if implemented in true constitutional essence, it will not impose the majority law, instead of rights first approach should be taken instead of uniformity, Article 44 should be read with Article 14, 21, 25, 28. The Uttarakhand legislation which came into force on “27 January, 2025”, known as “The Uniform Civil Code of Uttarakhand Act, 2024” is the first ever steps towards achieving uniformity and shows that each state can implement their own UCC until a center level UCC is achieved. There are still gaps concerning privacy and fragmented uniformity due to different states implementing their own UCC. Thus, this research paper aims to identify those gaps and examine the implications of the Uttarakhand legislation along with some suggestions.

Keywords: Religious Freedom, live in relationship, personal laws, judicial review, Uniform Civil Code Act, 2024, fragmented uniformity

INTRODUCTION

The Indian Constitution stands at the helm of the nation's legal and political spheres, and harmonises two foundational yet sometimes conflicting commitments: "freedom of religion and equality before the law". A complex and persistent area of tension with these competing interests is with the Uniform Civil Code. The UCC is intended to be a framework of "one law for all" pertaining to personal status issues such as marriage, divorce, inheritance, and adoption. The UCC seeks to remove religion-based personal laws and replace them with a common civil law. However, personal laws are closely tied to religion, cultural self-governance, and community empirical traditions. Hence, the quest for uniformity in Indian constitutional law is one of the most controversial.¹

Article 44 of the Directive Principles of State policy provides the legal basis for the UCC, as it states that "the State shall endeavour to secure a uniform civil code for all citizens in all parts of the territory of India". However, in contrast to Fundamental Rights, the Directive Principles are non-justiciable, which illustrates the Constitution's slow and incremental approach to social reform. This approach illustrates that while, from a long-term perspective, civil law uniformity aims to achieve equality and national integration, the immediate, post-independence scenario in India's vast and varied religious and cultural diversity required a more careful and politically astute approach. This is the reason why the framers positioned the UCC in Part IV instead of Part III. This clearly indicates its constitutional significance, but also the socio-political challenges affecting its operationalisation.²

The last several decades have seen the evolution of the Uniform Civil Code (UCC) from an overshadowed hypothetical document to an active and incendiary topic of debate, litigation, and public discourse. Most advocates for the UCC Amendment understand the necessity for the UCC to enact the principles of justice, equality, and legal certainty. They also identify the discriminatory practices of some personal laws, especially those that disadvantage women, and maintain that the UCC is required to give effect to the Constitution's promises of equality and non-discrimination, and the right to live with dignity. Many opponents of the UCC Amendment express the belief that the pursuit of uniformity is a mask for majoritarianism. It has been

¹ Vrinda Narain, "Postcolonial Constitutionalism in India: Complexities & Contradictions", 25 S. Cal. Interdisc. L.J. 107 (2016).

² Ankit Singh & Nischaya, "UCC: The Past, the Present, and the Future", 6 Int'l JL Mgmt. & Human., 6, 1742 (2023).

argued that the personal laws are not just legal codes, but interwoven with the customs and religions of the people, and that the displacement of such laws would be a threat to India's pluralism. This apprehension is directly related to the constitutional provisions contained in Articles 25 and 26, which safeguard the "freedom of conscience" and the "right of religious denominations to manage their affairs in the matters of religion". Thus, from this perspective, the UCC debate goes beyond legal reforms to the question of the extent to which the State can exercise power in restructuring social and religious life in a pluralistic and diverse democracy.³

An enduring tension generates some basic constitutional issues. What are the constitutional limitations on the State's ability to unify a civil structure in a way that does not contravene the freedoms granted by Article 25 and 26? Where is the secular regulation versus the safeguarding of "essential religious tenets" line? How do we prioritise competing Directive Principles versus Fundamental Rights when both sides claim to support the greater constitutional pursuit of justice and equality? These questions are politically and judicially active and have significantly impacted the course of reform in personal laws in India.⁴

Supporters of the Uttarakhand law see it as strengthening constitutional values like dignity and equality, and being a more constructive way to meet the requirements of Article 44. In contrast to that viewpoint, critics are concerned that the law advocates a dangerous precedent of homogenisation that may be detrimental to the country's religious and cultural pluralism and the federal system of the country by introducing competing and conflicting "uniformity" models across different States.

As such, the Uttarakhand law offers an opportunity to study what is the present-day constitutional significance of the UCC as it operates on multiple layers of the federal system. It forces us to examine the interface between personal laws, fundamental rights, and the directive principles of state policy, as well as examine the law's implications for federalism. It forces us to examine whether such a law actually achieves gender justice and equality, or whether it merely creates additional layers of exclusion under the cover of being progressive.⁵

This research examines the Uniform Civil code in contemporary India while valuating the

³ Vansh Kapoor & R.K. Singh, *Uniform Civil Code & Its Importance*, 2 *Law Foyer Int'l J. Doctrinal Legal Rsch.* 11 (2024).

⁴ Vishal Khan & Mohd. Javed Mahmood, "Uniform Civil Code (UCC): Application & Implementation", 1 *Law Foyer Int'l J. Doctrinal Legal Rsch.* 49 (2023).

⁵ *Supra* note 4.

Uttarakhand UCC Model.

RELATIONSHIP BETWEEN ARTICLE 44 AND FUNDAMENTAL RIGHTS

The Uniform Civil Code (UCC), raises questions about the constitutionality concerning the structure of rights, the extent of religious freedoms, and how one interprets secularism and equality provisions in the Constitution. Article 44 of the Indian Constitution states, “the State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India.” While demonstrating the aim of constitutional uniformity in personal laws, this particular provision acknowledges the social and political complexities that such reforms may encounter.⁶

The constitutional framework governing personal laws comprises two competing laws. First, Articles 14 and 15, along with 21, which protect life and personal liberty, now have an expansive interpretation to include dignity, autonomy, and privacy, etc. On the other hand, Articles 25 and 26, which provide for the freedom of conscience and the right to profess, practise, and manage religion, with the exception of public order and morals, health, and other fundamental rights. These coexisting provisions create an inevitable constitutional friction in the family law domain where legal regulation meets religious identity, cultural practices, and mixes with the personal.⁷

In “*State of Bombay v. Narasu Appa Mali*”⁸, the High Court of Bombay held that personal laws are not considered as 'laws' under Article 13, hence, direct scrutiny of fundamental rights does not apply. Although this view has been increasingly questioned in later constitutional discourse and judgments, it historically reflects the judicial reluctance to treat personal laws on par with ordinary legislation for the purposes of constitutional invalidation.

The constitutional position of Art 44⁹ is to be understood in line of the bridge between Fundamental Rights and Directive Principles. Earlier, the Supreme Court adopted a hierarchical approach, holding in “*State of Madras v. Champakam Dorairajan*”¹⁰ that Directive Principles could not override Fundamental Rights.

⁶ Gautam Bhatia, “Directive Principles of State Policy: Theory and Practice” (2015).

⁷ Shivam Nassa, “The Debate over Uniform Civil Code (UCC) and Its Significance for India as a Secular Democracy”, 3 Indian J. Integrated Rsch L. 1 (2023).

⁸ AIR 1952 BOMBAY 84.

⁹ INDIA CONST. art.44

¹⁰ 1951 SCR 525.

In “*Kesavananda Bharati v. State of Kerala*”¹¹, it was held that both Part III and Part IV are integral to our Constitution’s basic structure. This was reaffirmed in “*Minerva Mills Ltd. v. Union of India*”¹². The Court warned that giving absolute primacy to either would distort the constitutional scheme. In “*Danial Latifi v. Union of India*”¹³, the Court read the “Muslim Women (Protection of Rights on Divorce) Act, 1986” in a manner that ensured reasonable and fair provision for divorced muslim women. Likewise, in “*Vineeta Sharma v. Rakesh Sharma*”¹⁴, the Court held that daughters shall also have coparcenary rights under the Hindu Succession (Amendment) Act, 2005. The described decisions depict a constitutional trend that is crystal clear; the norms of personal laws, whether based on statutes or religious traditions, cannot escape the reach of Article 14.

Articles 25 and 26¹⁵ guarantee “freedom of conscience and the right to freely profess, practise, and propagate religion”, as well as the right of religious denominations to manage their own affairs in matters of religion. The Constitution envisages not an absolute but a qualified protection of religious freedom subject to health, morality and public order. The Supreme Court, in “*Commissioner, Hindu Religious Endowments v. Shirur Mutt*”¹⁶, laid down the foundational distinction between “essential religious practices, which are protected, and secular activities associated with religion”, which may be regulated by the State. The “essential religious practices” doctrine is the primary judicial tool for balancing conflicts involving religious freedoms and social reforms. In the cases of *Shah Bano* (1985)¹⁷ and *Sarla Mudgal* (1995)¹⁸, the Court referred to Article 44 and the constitutional desirability of uniformity, but both of her decisions were based on rights that were enforceable and legislative enactment. In the case of *Danial Latifi* (2001)¹⁹, the Court also left room for legislative balancing but also ensured compliance with Articles 14 and 21 on the basis of her own construction. This indicates that in as much as Article 44 is still a basis for the Constitution, the real driver of judicial activism in family law is the application of rights in the context of a combination of the provisions in the 3rd and 4th Parts of the Constitution.

¹¹ AIR 1973 SC 1461.

¹² AIR 1980 SC 1789.

¹³ AIR 2001 SC 3958.

¹⁴ AIR ONLINE 2020 SC 676.

¹⁵ The Constitution of India 1950.

¹⁶ 1954 SCR 1005.

¹⁷ AIR 1985 SC 945.

¹⁸ 1995 SCC (3) 635.

¹⁹ AIR 2001 SUPREME COURT 3958.

UTTARAKHAND UNIFORM CIVIL CODE

The Uniform Civil Code of Uttarakhand, 2024 is landmark legislation, as it enacts a long overdue constitutional goal. The Act is legally significant as it provides a common legislation on the ground for the marriage and divorce of live-in relationships and related issues, as it provides a legally common construct. The groundbreaking and thinking unfolding of the “Uniform Civil Code of Uttarakhand, 2024”, is the hope of the legal roadmap of this country. The significance of this enactment is beyond the fact that it is the first of its kind. It is the path that has been designed to be different that is most significant.²⁰ The Act has not been written as a short declaratory law. Its section arrangements show considerable legislative design split into preliminary provisions, Part 1 on marriage and divorce, Part 2 on succession, Part 3 on live-in relationships, and Part 4 on miscellaneous. As such, the statute does not pertain to a single branch of family law. It aims to cover a broad spectrum of intimate and domestic legal relations, and place them under one civil framework.

Section 2 of the Act excludes Scheduled Tribes from its application. These features demonstrate that the Code does not establish a completely universal civil regime, even in the state’s own framework. It claims broad but qualified uniformity.

Chapter 1 of Part 1 begins with section 4, which specifies the fundamental terms of marriage. This provision provides that to be legally married, a prospective husband and wife have to be free from the bonds of marriage, mentally sound and capable of providing or withholding consent, the husband has to be 21 years of age, and the wife 18 years of age, and they must not fall within the prohibited degrees of relation, unless custom allows such a marriage. Section 5 provides that a marriage may be solemnised or contracted by any form or ceremony, including the rites and practices of customs. These two provisions are interesting. The Code does not seek to eliminate ceremonial diversity or customary ways of solemnising marriages. On the contrary, it retains ritual diversity, but sets a uniform legal minimum.²¹

Sections 12 to 16 create the administrative system for this registration system. Section 12 outlines the process for appointing a Registrar General, Registrars, and Sub Registrars. Powers and responsibilities for the stated positions are detailed in Section 13. Section 14 covers the

²⁰ Ravi Kumar, “Journey of Indian Society Towards Uniform Civil Code”, 13 *oc. Sci. & Human. Open* 102459 (2026).

²¹ Anjali Tyagi, *Uniform Civil Code: A Holistic Analysis*, 2 *LawFoyer Int'l J. Doctrinal Legal Rsch.* 386 (2024).

registers, and Section 15 makes the registers available for public viewing at reasonable times, and may, upon application and payment of the appropriate fee, issue certified copies of the registers. Section 16 states that the certificates and copies are presumed to be correct and may be used as evidence. These provisions show that the Code is a framework for governance, and not just a family-law statute. The law attempts to establish a public record of sensitive civil statuses. Once marriages and divorces are recorded in registers the state manages, they are subject to public scrutiny and administrative documentation can be used to provide proof of those events. While this may provide clarity and certainty, it illustrates that the Code intends for the state to understand family relations on a structural level.

The most controversial section of the Uttarakhand Uniform Civil Code is part 3, which outlines live-in relationships under sections 378 to 389. This part is important for any substantial legal assessment of the Code because it shows the statute going beyond traditional family law reform, entering the unregulated territory of intimate relationships outside marriage. This part of the Code views live-in relationships as social realities that, rather than receiving incidental legal acknowledgment in the case of disputes, require relationships to be disclosed, scrutinised, and entered into a civil record maintained by the state.

Courts have somewhat acknowledged these relationships in the context of spousal abuse and the legitimacy of children. But in general, they refuse to make cohabitation an obligatory declaratory balance. The Uttarakhand Code does just that. It creates a legal duty to declare the relationship to the Registrar, empowers the Registrar to inquire, and punishes the Registrar for noncompliance. These components together create a regime in which consensual cohabitation of adults is subject to mandatory state scrutiny.²²

Section 386 addresses children of live-in relationships, and the Rules state that in cases concerning the maintenance of a woman live-in partner and the maintenance, custody, and care of a minor child, the provisions of Chapter 5 of Part 1 of the Code are to apply *mutatis mutandis*. This is important because it indicates that the state does not view live-in relationships as merely suspicious arrangements that invite scrutiny, but rather as relationships that potentially give rise to claims of maintenance and child custody.

²² C.L. Narayan & M. Narayan, “Uniform Civil Code, Uttarakhand, 2024 – Uniformizing Marriage Laws and Legalizing Live -in Relationships”, 6 J. Psychosexual Health 220 (2024).

CONCLUSION

The primary focus of this research paper is to argue that the Uniform Civil Code is a constitutionally legitimate but constitutionally conditioned project. The Constitution does not prohibit the reform of personal laws. Arguably, it even encourages such reform. However, reform that violates dignity, privacy, or pluralism is impermissible. The Uttarakhand Uniform Civil Code shows that State legislating common civil rules is possible. The Uttarakhand model represents a landmark starting point, not an endpoint. It is a constitutional experiment, and its greatest value is that it forecloses many of the questions that future reform must address. If a just and workable UCC for India is to ever emerge, it will have to focus less on uniformity and more on ensuring the equal civil dignity of diverse communities.

Future UCC reforms, both at the state level and at the national level, should take a rights-first approach, rather than a uniformity-first approach. Article 44 should be read with Articles 14, 21, 25, and 26. Reform should be geared towards broadening equal, dignified and legally secure opportunities, and not just aim for uniformity for uniformity's sake. Marriage and divorce registration should be bolstered as a rights protective measure, while the process can still be informal and non-punitive. Registration is one of the most justifiable components of the Uttarakhand model because it enhances proof of status. However, the state should simplify documentation requirements, allow multiple non-documentary proof options, and provide assistance to the rural, poor, and digitally excluded. The regime of live-in relationships needs to be reconsidered significantly. The state may justifiably provide protection to women and children in such relationships, but compulsory universal registration is not the least restrictive option. A more desirable approach to this would be remedial recognition, where proof of cohabitation for the purposes of claiming rights is allowed, without the requirement for all adult intimate relationships to be pre-registered and recorded in a state registry. Any regime of civil code must incorporate the principles of data minimisation. Personal information should only be collected when absolutely necessary and should be clearly stated and identified and statutorily protected regarding retention and purpose. A civil-status database should not be created by the state without strong necessity and proportionality.

REFERENCES

- Vrinda Narain, Postcolonial Constitutionalism in India: Complexities & Contradictions, 25 S. Cal. Interdisc. L.J 107 (2016).
- Ankit Singh & Nischaya, UCC: The Past, the Present, and the Future, 6 Int'l JL Mgmt. & Human., 6, 1742 (2023).
- Vansh Kapoor & R.K. Singh, Uniform Civil Code & Its Importance, 2 LawFoyer Int'l J. Doctrinal Legal Rsch. 11 (2024).
- Vishal Khan & Mohd. Javed Mahmood, Uniform Civil Code (UCC): Application & Implementation, 1 LawFoyer Int'l J. Doctrinal Legal Rsch. 49 (2023).
- Gautam Bhatia, Directive Principles of State Policy: Theory and Practice (2015).
- Shivam Nassa, The Debate over Uniform Civil Code (“UCC”) and Its Significance for India as a Secular Democracy, 3 Indian J. Integrated Rsch L. 1 (2023).
- State of Bombay v. Narasu Appa Mali, AIR 1952 Bom. 84
- State of Madras v. Champakam Dorairajan, 1951 SCR 525
- Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461
- Minerva Mills Ltd. v. Union of India, AIR 1980 SC 1789
- In Danial Latifi v. Union of India, AIR 2001 SC 3958
- Vineeta Sharma v. Rakesh Sharma, AIR ONLINE 2020 SC 676
- INDIA CONST. (1950)
- Commissioner, Hindu Religious Endowments v. Shri Lakshmdra Thirtha Swamiar, 1954 SCR 1005
- Mohd. Ahmed Khan v. Shah Bano Begum, AIR 1985 SC 945

- Sarla Mudgal v. Union of India (1995) 3 SCC 635
- Ravi Kumar, Journey of Indian Society Towards Uniform Civil Code, 13 oc. Sci. & Human. Open 102459 (2026).
- C.L. Narayan & M. Narayan, Uniform Civil Code, Uttarakhand, 2024 – Uniformizing Marriage Laws and Legalizing Live -in Relationships, 6 J. Psychosexual Health 220 (2024).