
WHEN PROTECTION TURNS INTO SURVEILLANCE: LIVE-IN RELATIONSHIPS UNDER THE UCC

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ABSTRACT

This paper critically analyses a specific provision of the Uniform Civil Code (UCC) introduced in Uttarakhand in 2024. The UCC aimed to make personal laws uniform and protect the interests of vulnerable groups; however, its mandatory regulation of live-in relationships contradicts its stated objective. This research paper aims to analyse whether the unprecedented regulation of live-in relationships will align with constitutional morality or undermine it. Employing a doctrinal research methodology, this paper draws on primary legal sources, including the text of the UCC, its drafting committee reports, and the provisions of the personal laws applicable to different communities. The author has used various landmark Supreme Court judgments to strengthen arguments and to expose certain fallacies of the UCC. Jurisprudential theories, including Ronald Dworkin's conception of rights as "trumps" and Robert Alexy's proportionality framework, provide a critical analysis of the legislative aim of the UCC and whether it aligns with the provisions of the Indian Constitution. The author also used a few secondary sources, including a family law handbook, journal articles, and sociological critiques of moral policing, to highlight the disproportionate effects of the UCC on vulnerable groups. The objective of this paper is not only to criticise the arbitrary regulation of live-in relationships, but also to highlight the benefits that can be enjoyed by people who register their relationships. Ultimately, the paper aims to highlight the significant shortcomings to legislators so that they can have informed debates, to caution policymakers against such arbitrary provisions, and to advocate for a Civil Code that protects the fundamental rights, liberty, and dignity of citizens in its essence.

Keywords: Constitutional Morality, Family Law Reform, Live-in Relationships, Proportionality, Uniform Civil Code.

INTRODUCTION:

Since the enactment of the Indian Constitution, the Uniform Civil Code (UCC) has been highly debated and discussed by scholars, politicians, lawyers, law students, academicians and the public. The constitutional makers felt the need for a uniform civil code, but, given the prevailing circumstances, the UCC was enacted as a Directive Principle of State Policy under Article 44 of the Constitution. This was passed with a modernistic vision of achieving equality and unification, and of removing gender discrimination and secularism. However, according to scholars such as Werner Menski,¹ have argued that such a vision is fulfilled but in a completely different manner through judicial activism and legislative interventions, to achieve a pragmatic balance between social welfare, gender justice, and cultural diversity, while respecting the country's deeply entrenched traditions of legal pluralism.

Menski demonstrated this² through a metaphor: Krishna asking for the moon captures the unrealistic expectations of an immediate UCC in post-independence India. UCC has not been formally implemented; however, piecemeal reforms across personal laws have created a sophisticated, welfare-oriented system. The judiciary has sought to capture the essence of UCC through landmark cases such as *Mohd. Ahmed Khan v. Shah Bano Begum*³ and *Danial Latifi v. Union of India*,⁴ which have successfully expanded maintenance rights for women across communities, gradually harmonising personal laws without dismantling them. India's approach can be pluralistic yet welfare-conscious, highlighting its capacity to mould traditions and customs in the most gender-neutral manner, without harming traditional beliefs. However, there has still been a constant demand for UCC among politicians and scholars, even though they explicitly state cultural and social anxieties.

It is within this larger political and historical debate that Uttarakhand, in 2024, became the first Indian state to enact a Uniform Civil Code. This can be seen as a progressive step grounded in the legislative intent of equality, gender justice, and uniformity within civil law. This could also be seen as a framework or example for a National Uniform Civil Code. Therefore, a thorough analysis and critique of the provisions of the UCC in Uttarakhand needs to be conducted. The Expert Committee set up by the government of Uttarakhand has emphasised in its report that

¹ Werner Menski, 'The Uniform Civil Code Debate in Indian Law: New Developments and Changing Agenda' (2008) 9(3) German Law Journal 211

² Menski, 'The Uniform Civil Code Debate' (n 1)

³ *Mohd Ahmed Khan v Shah Bano Begum*, AIR 1985 SC 945

⁴ *Danial Latifi v Union of India*, (2001) 7 SCC 740

the UCC was designed to protect vulnerable groups, especially women and children, by simplifying and unifying laws governing marriage, divorce, succession, and adoption. The committee further stated that it is seen as an effective measure to foster social harmony and a step towards achieving the constitutional mandate of Article 44.

This paper aims to highlight the arbitrary provision of the UCC in Uttarakhand for regulating Live-in relationships. It could serve as a caution to the legislature when enacting the UCC for India. Even though live-in relationships, or cohabitation without marriage, have been recognised and accepted by the judiciary, they still face a lot of societal backlash. In such a societal context, making the registration of live-in relationships mandatory cannot be justified as a fair legislative act. The legislature is seen to justify such an attempt by painting it as a protective measure to prevent exploitation of women and children; however, such provisions directly infringe the fundamental rights of the consenting couples. Finally, the paper concludes by contrasting the legislature's intent with the adverse consequences of overregulation and cautions that such provisions, if replicated nationally, may erode the constitutional values the UCC is meant to promote.

THE UNIFORM CIVIL CODE IN UTTARAKHAND: LEGISLATIVE INTENT AND FRAMEWORK:

To criticise the provisions of the UCC in Uttarakhand, we must first analyse the procedures followed and the legislative intent behind its formulation. An expert committee was constituted under the chairmanship of Justice Ranjana Prakash Desai, comprising members from diverse fields such as law, administration, and academia. The committee has meticulously sought to elicit the views of the residents of Uttarakhand by reaching out to them in every possible manner: they have visited every nook and corner of the state and used digital means. Considering the views expressed during public consultations and after careful consideration, the committee concluded that piecemeal attempts to amend personal laws would not be sufficient to combat social, economic, gender, and religious inequalities. The UCC is the outcome of an endeavour by this committee to understand and analyse the existing personal laws and suggest a secular and uniform legislative framework that aims at removing gender-based inequities.

The primary intent of the committee and the Uttarakhand legislature is directly linked to the Directive Principle of State Policy as stated in Article 44 of the Indian Constitution. Article 44

of the Constitution states that *the State shall endeavour to secure a uniform civil code throughout the territory of India for the citizens and, therefore, eventually envision a common set of civil laws for all citizens*, irrespective of their religion—the primary objectives point towards a commitment to uniformity, equality before the law and social justice. The expert committee has time and again emphasised the need to protect the rights of women, children and other vulnerable groups because they are subject to perpetual and targeted discrimination. The drafters of the UCC focused on a corrective measure to eliminate discriminatory practices under personal laws.

Another stated objective of the UCC in Uttarakhand is to simplify and harmonise the varied personal laws, ensuring certainty and reducing inter-community conflicts. UCC has been publicised as a progressive reform that will align international human rights obligations with the constitutional morality and human dignity. The UCC also intends to achieve social harmony and integration by framing provisions that strengthen unity between the communities of Uttarakhand. It can also be seen that the ambit of UCC extends beyond personal laws, as it regulates live-in *relationships*. This can be seen as a progressive step, but it can also be seen as an overstepping by the legislature, which will be discussed in detail in this paper.

DEFINING LIVE-IN OR COHABITATION: BEYOND THE INSTITUTION OF MARRIAGE:

Cohabitation and live-in relationships represent arrangements where two individuals live together in an intimate relationship without being legally married⁵. The concept is not alien to India or any other country in the world, but in recent decades, it has become a statistically significant family form. Historically, known cohabitants in England faced punishment from ecclesiastical courts for "fornication, or sometimes for the more specific but rarer charge of 'living scandalously and suspiciously without lawful marriage'"⁶. The concept is seen to have evolved from traditional, often informal unions in poorer communities to a more socially accepted practice today.⁷ In India, the concept of cohabitation or live-in relationships is broadly understood as a situation where a couple or two persons choose to live together without the

⁵ Elaine E Sutherland, 'Unmarried Cohabitation' in Elaine E Sutherland (ed), *The Future of Child and Family Law: International Predictions* (Cambridge University Press 2012)

⁶ Rebecca Probert, 'Cohabitation: Current Legal Solutions' (2009) 62 *Current Legal Problems* 316

⁷ Kathleen Kiernan, 'Unmarried Cohabitation and Parenthood in Britain and Europe' (2004) 26 *Law & Policy* 33

intention of formal marriage⁸, which is still not entirely socially acceptable.

It can be seen that couples today prefer informal, live-in relationships over formal institutions of marriage, and a complex interplay of global social, economic, and individual factors influences this shift. It can also be seen that the institution of marriage is no longer considered a sacrament in the same manner as our ancestors, and therefore, young adults are no longer hesitant to dissolve such an institution. Cohabitation often offers a perceived lack of legal ties and greater freedom as compared to marriage, which appeals to individuals seeking to avoid legal formalities and the implications of a failed marriage.⁹ This is seen as a lucrative option with minimal disruption, given the presence of such Divorce Laws that are not easily accessible to couples. The presence of technicalities makes it very difficult for the couple to leave the institution of marriage, even if they both want to. Women, in particular, may wish to avoid what they perceive as male-dominated legal institutions and preserve their career mobility and independence.¹⁰

Many young adults consider live-in relationships as a trial marriage or a prelude to marriage, allowing couples to test their compatibility before formalising their commitment.¹¹ While some other couples consider it to be a direct alternative to marriage, because they expressly reject marriage due to its religious or patriarchal associations, or because the traditional package of consequences accompanying marriage does not suit their needs.¹² Another reason why couples prefer cohabitation could be the social taboo or the expectation of economic instability of men before confirming the marriage. Rising divorce rates may increase the perceived risks of investing in marriage, leading cohabitation to be seen as a logical response to such uncertainty.¹³ This is accompanied by the divorce laws, which are economically favourable for the women, making it disadvantageous for the men.

It is often debated whether cohabiting relationships perform the same functions as marriage. While both involve living together, intimacy, and usually love, a truly functional approach requires digging deeper into the functions that define a family and a marriage. For some,

⁸ Shraddha Mudgal, 'An Analysis of Live in Relationships in India' (2022) 2 *Indian J Integrated Rsch L* 1

⁹ Ruth L Deech, 'The Case against Legal Recognition of Cohabitation' (1980) 29 *ICLQ* 480

¹⁰ Ruth L Deech, 'The Case against Legal Recognition of Cohabitation' (1980) 29 *ICLQ* 480

¹¹ Shraddha Mudgal, 'An Analysis of Live in Relationships in India' (2022) 2 *Indian J Integrated Rsch L* 1

¹² Elaine E Sutherland, 'Unmarried Cohabitation' in Elaine E Sutherland (ed), *The Future of Child and Family Law: International Predictions* (Cambridge University Press 2012)

¹³ Kathleen Kiernan, 'Unmarried Cohabitation and Parenthood in Britain and Europe' (2004) 26 *Law & Policy* 33

cohabiting couples with children are increasingly regarded as "families," with 59% of Europeans considering them a family, compared to only 27% for childless cohabiting couples.¹⁴ This indicates that the presence of children is a more salient factor in defining a family than partnership status alone. Research in the UK suggests that cohabitation can be as beneficial for health as marriage when factors such as health dynamics are taken into account.¹⁵ These arguments challenge the core belief that marriages are better than live-in relationships, while marriage can only be seen as a formality that has been institutionalised through generations.

In India specifically, the concept of live-in relationships is nowhere explicitly defined by law, but it is becoming legally acceptable through various decisions and interpretations of the Supreme Court. Undeniably, there is significant social stigma and non-acceptance of live-in relationships in Indian society, but the increasing number of such relationships can gradually normalise them. In the landmark decision of the Supreme Court in the case of *Payal Sharma v. Superintendent, Nari Niketan*,¹⁶ the SC held that a live-in relationship between two consenting adults may be regarded as immoral but cannot be illegal. This Hon'ble Court made a similar statement in the case of *Lata Singh v. State of UP*,¹⁷ that although the concept of live-in is viewed as sinful by society, it is unquestionably legal in the eyes of the law. Therefore, the progressive judgments and interpretations of the Hon'ble Supreme Court are a stimulant in normalising the concept of live-in relationships in India.

There have been progressive steps taken not just by the judiciary but also by the legislature; the Domestic Violence Act of 2005 has recognised relationships outside the institution of marriage, termed "marriage-like relationships," and included them within the ambit of the law. One of the recommendations of the Malimath Committee was an amendment to Section 125 of the Code of Criminal Procedure. Through this amendment, they wanted to expand the scope of "wife" as mentioned in the section to include a woman living with a man "as his wife". This has expanded the scope of protection, and it can now be availed by women living in consensual marriage-like relationships.

Despite judicial interventions, there remain many ambiguities in the application and interpretation of the laws. Confusion and doubt exist, even among legal scholars and judges,

¹⁴ Rebecca Probert, 'Cohabitation: Current Legal Solutions' (2009) 62 *Current Legal Problems* 316

¹⁵ Jennifer L Kohn and Susan L Averett, 'Can't We Just Live Together? New Evidence on the Effect of Relationship Status on Health' (2014) 35 *Journal of Family and Economic Issues* 295

¹⁶ *Payal Sharma v Superintendent, Nari Niketan*, AIR 2001 All 25

¹⁷ *Lata Singh v State of U.P.*, (2006) 5 SCC 475

regarding the scope and implications of phrases such as "relations in the nature of marriage". Other non-marital relationships exist and could be included within the definition of "marriage-like relationship", and an absence of clear legal categorisation has left the scope wide open. Even consensual adult live-in relationships have been compared to relationships like "servants" or "one-night stands"¹⁸. The Indian legal trend is not replicating Western models but is asserting the need for an open discussion of legal remedies for couples in these relationships.

WHEN PROTECTION BECOMES SURVEILLANCE: CRITIQUING THE UCC'S REGULATION OF LIVE-IN RELATIONSHIPS

Since the enactment of the Uniform Civil Code (UCC) in Uttarakhand in 2024, the state has received nothing but appreciation, and it is considered a pioneer in implementing legislation amid a long history of unfulfilled promises. Legislators nationwide and others who support this move have labelled it a progressive framework that eliminates gender discrimination. They can be seen claiming it as a landmark legislation that has simplified the complex personal law system and protects women's rights. However, a thorough analysis of its provisions reveals that this piece of "progressive" legislation has clearly taken for granted the constitutional principles of liberty and autonomy in its mandatory regulation of live-in relationships.

For the first time in India, a law has been enacted that makes the registration of live-in relationships mandatory for all couples residing in the state of Uttarakhand; it also applies to residents of Uttarakhand residing outside the state's territory. The code clearly states that the couple *must* register within 30 days of living together, and failure to comply is not treated as a civil liability; rather, it is criminalised. The punishment ranges from imprisonment for up to three months or a fine of ₹10,000, which may be increased to six months and ₹25,000 if the couple ignore the notice sent by the registrar. The legislative intent behind such provisions is to protect the vulnerable groups, especially women and children; however, in reality, such provisions lead to unwanted state surveillance on consensual adult relationships. It is not justified to convert private intimacy into legal obligations, enforceable by law.

The social acceptance of live-in relationships in India is still at a very nascent stage, and the regulation of such relationships comes from the same background that it is immoral for two unmarried couples to live together in a "marriage-like relationship". The regulation can still be

¹⁸ Anuja Agrawal, 'Law and "Live-in" Relationships in India' (2012) 47(39) Economic and Political Weekly 50 <https://www.jstor.org/stable/41720191>

justified by the nature of such relationships, but criminalising non-registration does not align with India's constitutional jurisprudence, which clearly distinguishes between law and morality. In the case of *Payal Sharma v Superintendent, Nari Niketan*,¹⁹ the Allahabad High Court stated that, even though live-in relationships are often viewed as immoral, they cannot be regarded as illegal, and adults are entitled to cohabit without interference. Similarly, in *Lata Singh v State of U.P.*,²⁰ the Supreme Court held that a woman who has attained majority is free to marry or live with anyone of her choice. In these cases, the courts have repeatedly held that intimate relationships fall within the scope of the Right to Autonomy under Article 21 of the Indian Constitution.

However, the Constitution clearly states that the fundamental rights given to citizens are not absolute and are subject to reasonable restrictions. The state would argue that the UCC provisions are reasonable restrictions on the fundamental right to autonomy and do not violate any provisions of the Constitution. While legislation may impose reasonable restrictions, it was stated in the landmark case of *Justice K.S. Puttaswamy v Union of India*,²¹ that the principle of proportionality must be strictly followed while imposing any such restriction. The proportionality principle states that any restriction on a fundamental right must have a legislative intent in the best interest of the affected groups of society. The legislative intention has to be proportional to the fundamental rights, and it should put the least restrictions as possible. The restriction is not proportional and reasonable because there already exist laws like the Protection of Women from Domestic Violence Act, 2005, which protects women in marriage-like relationships; there is no reasonable justification to impose reasonable restrictions on individuals' fundamental rights under Article 21.

The proportionality analysis of the Uttarakhand UCC clearly revealed how the harm significantly outweighed any conceivable benefit. Robert Alexy's three-stage structure of rights adjudication demonstrates that rights are justified by reasons, translated into legal rules, and enforced through proportionate mechanisms.²² The aim of the legislation to protect the rights of women may be legitimate, but the enforcement mechanism, criminalisation and documentation of intimate relationships, undermines the very aim by violating their privacy

¹⁹ *Payal Sharma v Superintendent, Nari Niketan*, AIR 2001 All 25

²⁰ *Lata Singh v State of U.P.*, (2006) 5 SCC 475

²¹ *Justice K.S. Puttaswamy v Union of India*, (2017) 10 SCC 1

²² Robert Alexy, 'Rights and Liberties as Concepts' in Michel Rosenfeld and András Sajó (eds), *The Oxford Handbook of Comparative Constitutional Law* (OUP 2012)

and making couples vulnerable to violence. This contradiction between legislative intent and its implementation is disproportionate, and the principle of proportionality holds that there shouldn't be legislation restricting the fundamental rights of citizens in which the restriction on those rights exceeds the benefits of the measure.

It is not just the mandatory registration that violates citizens' fundamental rights; the registration procedure worsens the situation. Registration is not a simple administrative formality but a bureaucratic process that is a direct intrusion by the state into the personal lives of individuals. Couples are required to submit a formal statement of their relationship to the Registrar, who then has the discretion to verify its authenticity, summon witnesses, demand additional documents, and even reject the application on certain grounds of non-registration as specified in the act. The misery doesn't end here; it is the duty of the registrar to report about every registered live-in relationship to the local police or the officer-in-charge, and if either partner is below the age of twenty-one, the Registrar is required to inform their parents. Such a procedure makes the information about the consensual adult couple available to the government and authorities, which are easily accessible by the families or by anyone who might have some connections, further marginalising the vulnerable groups.

The concerns go beyond individual liberty; the broader sociological implications of these provisions are equally alarming. By forwarding every registration to the police, the state effectively creates a surveillance database of couples who have chosen not to marry. This form of moral policing undermines the fundamental right of Privacy, which is guaranteed to every citizen and was also recognised in the landmark decision of *Navtej Singh Johar v Union of India*.²³ The court in this case had decriminalised consensual same-sex relations. It emphasised that constitutional morality, not social morality, must be the driving force behind the making of any legislation. The Court in the same case has also observed that 'the right to love and to partner' is an intrinsic part of dignity, and that this right is entirely disregarded in Uttarakhand UCC, which seeks to legitimise relationships only through state-sanctioned approval.

Moreover, the code states that the couple must register within 1 month of entering into a live-in relationship, and any delay beyond this period will result in specific criminalisation provisions. However, it is contended that a one-month registration deadline imposed by the UCC is unworkable. Most live-in relationships evolve organically, and it is often impossible to

²³ *Navtej Singh Johar v Union of India*, (2018) 10 SCC 1

pinpoint an exact date of commencement. This impracticality transforms the law into a trap, exposing couples to prosecution for failing to comply with an arbitrary timeline.

Such a law, which aims to protect vulnerable groups' rights and eliminate discrimination, undermines the accepted jurisprudence of Individual privacy and autonomy in India. In the landmark judgement of *K.S. Puttaswamy v Union of India*,²⁴ the Supreme Court has unanimously affirmed that privacy is an intrinsic element of liberty and dignity of an individual, which extends to the sexual autonomy of consenting adults. The autonomy of individuals is rendered meaningless if a choice of relationship and cohabitation is converted into a police record, and state surveillance and a call for parental verification cause more harm than good. Robert Alexy's rights theory clearly advocates the same problem: liberty consists of the absence of legal prohibitions, and when every exercise of choice is contingent on state scrutiny, rights are effectively hollowed out.²⁵

Another contentious provision of the Uttarakhand UCC is that it sets the age of majority at 21 and gives the registrar the authority to inform the couple's parents if the couple is below that age. However, this contrasts with the age of majority set by the Majority Act 1875, which has affirmed 18 years as the age of majority in India. The Supreme Court in the case of *Shafin Jahan v Asokan K.M.*²⁶ ruled that the right to choose a partner is the exclusive domain of each individual, and neither the state nor parents can override this choice. Similarly, in the case of *Soni Gerry v Gerry Douglas*,²⁷ it was reiterated that once an individual attains majority, courts or guardians have no authority to interfere in her decisions. By making twenty-one the minimum age for parental non-interference, the UCC is not proportional in imposing such restrictions. This could have been achieved through optional registration for couples who require support from the State, rather than imposing a blanket criminalisation regime.

The fact that Uttarakhand UCC hasn't recognised live-in relationships in their true nature and form. The requirement for registration of a live-in relationship clearly shows that only those relationships can be registered that replicate a marriage. UCC relies on social morality and treats live-in relationships as socially deviant arrangements requiring state oversight and effective legislation, in ways the Court has repeatedly rejected. The requirement that all live-in

²⁴ Justice K.S. Puttaswamy v Union of India, (2017) 10 SCC 1

²⁵ Robert Alexy, 'Rights and Liberties as Concepts' in Michel Rosenfeld and András Sajó (eds), *The Oxford Handbook of Comparative Constitutional Law* (OUP 2012)

²⁶ *Shafin Jahan v Asokan K.M.*, (2018) 16 SCC 368

²⁷ *Soni Gerry v Gerry Douglas*, (2018) 2 SCC 197

relationships have to be marriage-like relationships further exacerbates these assumptions. The Supreme Court in the case of *Indra Sarma v V.K.V. Sarma*²⁸ has discussed the difficulties in defining the phrase “marriage-like relationships” and laid down factors like shared household, duration, and reputation as defining such relationships. Codifying this vague phrase into statutory law, without defining its scope and nature, has given the registrar and the State discretionary powers over live-in relationships. Such discretion would not only lead to non-registration but would also lead to an increase in discrimination and marginalisation of the vulnerable groups who would have approached the registrar for registration.

Adults who choose to live together and cohabit to ease the burden of their social lives are now burdened by the UCC documentation requirement. Along with registration, they are required to submit proof of residence, proof of age, and even a *certificate of permissibility of marriage* from a community or religious leader. The problem is not with the documentation; the problem arises when this code only advocates for the institution of marriage and, somehow, accepts live-in relationships only because they mirror marriage. The requirement of a certificate of permissibility of marriage and the fact that the live-in relationship shouldn't be within the prohibited degrees clearly show the intention of the State only to recognise those relationships that mirror marriage. However, the point of contention is that live-in relationships are a form of cohabitation that couples often resort to when they do not accept the institution of marriage and are not allowed to marry due to various laws and societal norms.

This provision for the requirement of a *certificate of permissibility of marriage* from a community or religious leader essentially exposes couples to potentially hostile authorities, inviting social stigma, harassment, and violence. In a society where honour killings and familial violence against couples remain widespread, forcing couples to seek validation from religious leaders not only violates privacy but also actively endangers them. The Supreme Court in the cases of *Lata Singh v. State of UP*²⁹ and *Asha Ranjan v State of Bihar*³⁰ emphasised the duty of the state to protect couples who defy caste or religious boundaries, yet this law does the opposite by institutionalising exposure. It also violates the fundamental rights of individuals by indirectly empowering religious authorities to control or validate relationships.

²⁸ *Indra Sarma v V.K.V. Sarma*, 2013 (15) SCC 755

²⁹ *Lata Singh v State of U.P.*, (2006) 5 SCC 475

³⁰ *Asha Ranjan v State of Bihar*, (2017) 4 SCC 397

Uttarakhand UCC is also seen to have exacerbated gendered vulnerabilities, and its implementation would further push the vulnerable to the margins. Many women choose live-in relationships to escape oppressive marital structures and discriminatory personal laws, as the institution of marriage highly limits their autonomy, and the provisions for divorce are not easily accessible. Others are compelled to choose live-in relationships because interfaith or inter caste marriages invite communal violence, and the provisions of the Special Marriage Act often add to the adversity³¹. By imposing mandatory registration, the UCC strips them of anonymity and choice, reinforcing the patriarchal control they sought to escape. Sociological studies have documented how moral policing in India disproportionately targets women, and this legal framework codifies such scrutiny.

The Uttarakhand UCC's regulation of live-in relationships is neither a positive nor a progressive measure; it actively limits individual freedom and personal choice. It represents a systemic overreach that violates constitutional principles of equality, liberty, privacy, and dignity. By criminalising the non-registration of private decisions, raising the age of autonomy, and granting the registrar discretionary powers, the law fails at every stage of the proportionality analysis. It is excessive, overly broad, and detrimental, creating new inequalities while pretending to eliminate old ones. The legislation contradicts the purpose of a Uniform Civil Code, which should ideally streamline and liberalise family law rather than increase state control over personal lives. Reforms are undoubtedly necessary to address gender injustice within personal law systems, but there cannot be such reforms that directly infringe the fundamental rights of individuals in certain relationships. The Uttarakhand experiment serves as a critical warning: without a solid constitutional foundation prioritising dignity and choice, uniformity risks becoming disguised as coercion.

BETWEEN PROGRESS AND PITFALLS: ANALYSING THE UCC'S CLAIMED PROTECTIONS:

The Uttarakhand Uniform Civil Code (UCC) is an undeniably bold and ambitious legislative attempt to extend protections to groups historically ignored by personal law frameworks, particularly women and children in non-marital relationships. There have been judicial interventions in the cases of *Indra Sarma v V.K.V. Sarma*³² and *Velusamy v Patchaiammal*,³³

³¹ Pervez Mody, 'Love and the Law: Love-Marriage in Delhi' (2002) 36 Modern Asian Studies 223

³² *Indra Sarma v V.K.V. Sarma*, (2013) 15 SCC 755

³³ *D Velusamy v D Patchaiammal*, (2010) 10 SCC 469

wherein the court had cautiously recognised the rights of women in live-in relationships, but the absence of a codified legislation never gave water to the seed sown by the judiciary. Given the current legal landscape in India, one of the most commendable aspects of the UCC is that it grants women in registered live-in relationships a clear statutory right to claim maintenance if they are deserted.

This is one of the most beneficial provisions of the Uttarakhand UCC and correctly carries forward the legislative intent behind its enactment. Even in live-in relationships, the women end up getting financially dependent on their partner and therefore, desertion in such relationships is very similar to desertion in marriages. Such a progressive provision will directly help the deserted women to restart their lives, which was previously only given to women after divorce. Yet the legislature's ambition falls short: if live-in relationships are indeed equated with marriage in terms of rights and recognition, why is maintenance not extended to situations of voluntary separation, particularly where one partner is unable to sustain themselves? The refusal to recognise this reflects an incomplete understanding of dependency and care, and in doing so, undermines the very gender justice the UCC claims to advance.³⁴

There's another very significant and valuable provision of the Uttarakhand UCC, the one that gives legitimacy to the children born out of live-in relationships. In a society where stigma attached to non-marital births is deeply entrenched, this move symbolises an important cultural shift. By recognising that children have rights irrespective of their parents' marital status, UCC is completely in line with the constitutional principles of equality and dignity under Articles 14 and 21. The Hon'ble Supreme Court has also reiterated the same point in its judgment of *Tulsa v Durghatiya*,³⁵ that children born out of non-marital relationships should have inheritance rights. The UCC extends this principle further, ensuring that a child born out of a registered live-in relationship enjoys legitimacy and protection.

This move could play a transformative role in reducing discrimination against such children, granting them equal footing in matters of property, guardianship, and social recognition. Yet, as laudable as this step is, its implementation is undermined by the Code's insistence on registration, which creates a new hierarchy: only those children whose parents complied with procedural requirements enjoy this recognition without complication. Children whose parents

³⁴ D Velusamy v D Patchaiammal, (2010) 10 SCC 469

³⁵ Tulsa v Durghatiya, (2008) 4 SCC 520

either feared scrutiny or were unable to complete the bureaucratic process remain at risk of marginalisation.

The reasoning given by the drafting committee of the Uttarakhand UCC for the regulation and mandatory registration of live-in relationships is to prevent crime and maintain social order. They have argued that live-in relationships often escape legal oversight, creating opportunities for exploitation, trafficking, and violence.³⁶ It is undeniable that there have been reported cases of women and children being subjected to abuse in unmonitored domestic arrangements, and the state's attempt to respond to these realities cannot be entirely dismissed. The intent to maintain such records is the protective act of the state to deter crimes. However, this reasoning demonstrates a misplaced faith in surveillance as a tool of justice. As criminological studies repeatedly show, crimes against women and children are not prevented by registration regimes but by strong enforcement of criminal law. Therefore, the very mechanism intended to protect becomes a source of vulnerability, illustrating a disconnect between legislative intent and ground realities.³⁷

There do exist a few provisions which directly protect the rights of some of the vulnerable sections of society; however, we cannot ignore or overlook one of its glaring omissions: the non-recognition of non-heterosexual relationships. In the landmark case of *Navtej Singh Johar v Union of India*,³⁸ the Supreme Court had struck down Section 377 of the IPC and had recognised the rights of LGBTQ+ individuals to dignity, autonomy, and privacy. However, Uttarakhand's UCC remains firmly heteronormative, explicitly limiting registration to only heterosexual couples. The fact that same-sex couples do not have access to marriage as an institution, and they take recourse to live-in relationships. This omission is not a mere oversight; it reflects a refusal to engage with evolving constitutional morality. By failing to recognise same-sex partnerships, the law perpetuates systemic discrimination and contradicts its own rhetoric of equality.³⁹

The Code's failure to embrace inclusivity, particularly for LGBTQ+ citizens, represents a significant oversight that undermines its potential to be a true model for progressive family law reform. Across jurisdictions, from Europe to South America, the recognition of same-sex

³⁶ Uttarakhand UCC Drafting Committee, *Report on the Implementation of the Uniform Civil Code* (2024)

³⁷ Justice K.S. Puttaswamy v Union of India, (2017) 10 SCC 1, [303]

³⁸ Navtej Singh Johar v Union of India, (2018) 10 SCC 1

³⁹ Ibid [245]

partnerships has been a hallmark of modern legislative reform, signalling a shift from moralistic frameworks to a rights-based governance. India's constitutional jurisprudence has established the foundation for this shift, whereas Uttarakhand's UCC resists it by adhering to traditional interpretations of family. This exclusionary approach undermines its claim to uniformity and equality, reducing the UCC to a selective reform instrument rather than a transformative statute.⁴⁰

Even viewed optimistically, the UCC's provisions create a paradox: the law grants rights but conditions them on intrusive compliance. Women deserted in registered relationships may indeed benefit from a better legislative framework, and children may receive long-overdue legitimacy, but these gains are overshadowed by procedural hurdles and a culture of state surveillance. This creates a chilling effect where vulnerable individuals, particularly those affected by abusive households or societal stigma, may choose to forgo registration and its benefits thereupon. The intended safety net carries a larger risk of being inaccessible to those who need it most.⁴¹ This inconsistency reinforces the critique that the UCC has prioritised control over compassion.

Seen through the lens of proportionality, these provisions fail even the first step of rational connection. The main intention of protecting the rights of women is completely disregarded because the provisions clearly discourage them from seeking legal recognition or police protection. Instead of empowering victims, the law perpetuates a culture of fear and secrecy among young adults. The least restrictive means test also fails because protection for women already exists under the PWDVA and was also recognised in the case of *Velusamy v Patchaiammal*⁴² wherein the Court highlighted that while live-in relationships are not equivalent to marriage, women in such arrangements deserve remedies against domestic violence.

This analysis reveals a critical tension: while the law offers significant protective benefits, these advantages are fundamentally undermined by flaws in its design that make them inaccessible, discriminatory, or conditional. If maintenance for deserted women is a laudable step, why stop short of supporting those who voluntarily leave a relationship but remain vulnerable? If legitimacy for children is a progressive reform, why tether it to bureaucratic compliance? If

⁴⁰ Ronald Dworkin, *Taking Rights Seriously* (Harvard University Press 1977)

⁴¹ *Shafin Jahan v Asokan K.M.*, (2018) 16 SCC 368

⁴² *D Velusamy v D Patchaiammal*, (2010) 10 SCC 469

crime prevention is the motive, why not focus on strengthening enforcement mechanisms rather than penalising consensual adults? The unanswered questions clearly demonstrate that the UCC's approach prioritises establishing a specific moral vision of family life over protecting individual rights.

CONCLUSION

To conclude my contention, I would like to state that, since Uttarakhand UCC would serve as a model for a national UCC, it ought to be critically analysed and criticised. Undeniably, there has been a constant demand for a Uniform Civil Code, and it is the need of the hour too, but it cannot be passed with such arbitrary provisions. A civil code affects the lives of every citizen, whether directly or indirectly. Therefore, it must be legislated in a way that not only promotes equality on the surface, but also protects the essence of intimate relationships between individuals. In *Navtej Singh Johar*⁴³ case, Justice Chandrachud eloquently stated that constitutional morality cannot be “martyred at the altar of social morality,” a warning which is directly applicable to the approach taken by the Uttarakhand UCC.

The Uttarakhand UCC was introduced to harmonise personal laws and provide essential protections for women and children. However, its regulation of live-in relationships reveals a striking tension between the legislative intent and the fundamental provisions of the constitution. Rights like maintenance for deserted women and legitimacy for children are commendable, but they come shackled with surveillance, procedural burdens, and a heteronormative framework that excludes LGBTQ+ couples entirely. The law risks reinforcing stigma and reducing autonomy while reintroducing state control into private choices, ultimately undermining the equality it claims to support.

Real reform demands more than mere uniformity; it requires acknowledging and embracing the value of diversity and individual needs. Legislative reforms like the UCC should encompass provisions that honour diversity, autonomy, and dignity, while providing protection without resorting to surveillance. A family law framework like that of the UCC should be grounded in constitutional morality and seek to earn the trust of its citizens. The lesson is both straightforward and urgent: a progressive legal framework should not simply codify morality

⁴³ *Navtej Singh Johar v Union of India*, (2018) 10 SCC 1

but empower individuals to choose, love, and live freely without fear. Anything that does not align with this will turn a vision of reform into a mechanism of control.