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Sarasu Esther Thomas

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Uttarakhand UCC pits vulnerable young couples against the might of the state

The provisions for live in relationships infantilise young adults till age 21 and allow a patriarchal and paternalistic state and society to dictate what ought to be an intensely personal decision on whether their relationship should be private or public.

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Uttarakhand Chief Minister Pushkar Singh Dhami with others holds a copy of the Constitution of India, at Vidhan Sabha Bhawan, in Dehradun, Tuesday, Feb. 6, 2024. (PTI photo)

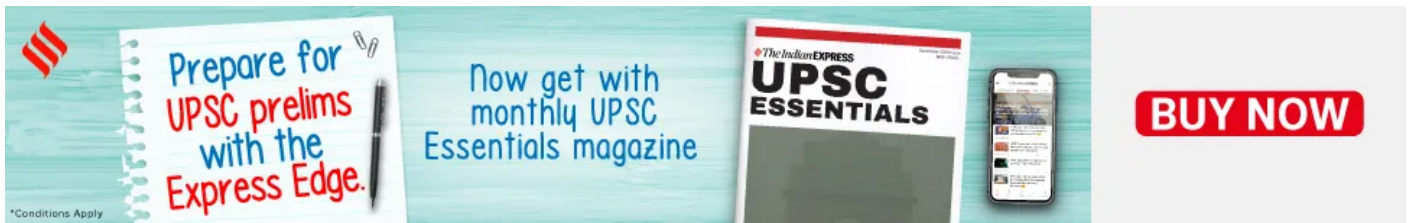
Written by Sarasu Esther Thomas

The Uniform Civil Code that looms over Uttarakhand is a Frankenstein created by cobbling together large tracts of the Hindu Marriage Act, 1955, the Hindu Succession Act, 1956 and testamentary provisions of the Indian Succession Act, 1925. It retains existing ambiguities in Hindu Law while preserving the primacy of agnacy i.e. the male line — for instance, preferring the step mother and father’s siblings over maternal grandparents and other cognatic relatives.

Uttarakhand’s Uniform Civil Code is neither uniform nor civil. This can be seen in provisions which make many exceptions for groups, its silence on the Hindu Undivided family, and its dilution of existing uniform standards. More troubling are the criminal provisions introduced in a statute that claims to be a civil code.

Particularly problematic is Part 3 on Live in Relationships. It is at variance with the “relationship in the nature of marriage” envisaged in the Protection of Women from Domestic Violence Act, 2005 (PWDVA) and as expounded by courts, which is equal, necessary protection for women all over India, bar none. By their very nature, such relationships are often not formally recognised by society or by other laws. The Code threatens to push some women outside the ambit of domestic violence law. Maintenance is a crucial right for women under the domestic violence law. Under the Code, maintenance rights of unregistered women become murky. The Protection of Women from Domestic Violence Act, 2005, is a law that cuts across personal laws, customary laws, and state laws — and this should be the law that should prevail.

Cumbersome procedures seek to actively dissuade non-marital relationships. Non-registration does not criminalise marriage, no notice for such intended marriage needs to be given under the law. However, for a live-in relationship, the situation is the opposite. Under the Code, after the couple applies for registration, the Registrar will conduct a summary inquiry, and may even call for additional evidence including summoning other persons before issuing a registration certificate. This is something not done in cases of marriage. As laid down in the [Maneka Gandhi](#) case, procedures impacting fundamental rights must be fair and reasonable to avoid being struck down. As the judge observed in the case, the procedure must not be “arbitrary, freakish or bizarre”.



LGBTQI rights have led to all sexual relationships between consenting adults being protected by the legal system. In the groundbreaking case of Navtej Singh Johar, the Supreme Court upheld the rights of consenting adults, reading down Section 377 of the Indian Penal Code. Ironically, now, relationships between men and women are criminalised under the Code unless procedures are followed, whereas all other relationships are not.

A sinister outcome of the Code is restricting freedom. It exposes young adults' sexual and marital choices to state, societal and parental control in complete violation of their constitutional rights to privacy, autonomy and personal liberty. The state, through the registrar, has to mandatorily inform the local police station as well as the parents of such relationships of young adults until the age of 21. It allows third parties to be summoned and perhaps encouraged to supply information and evidence as to the nature of the relations. If the registrar feels the statement is "suspicious", he can inform the police. All this makes couples vulnerable to violence, including honour killings, and will have a chilling effect on their freedom of choice. This chilling effect will impact inter-caste and inter-community marriages, and also many marriages which are outside the "arranged marriage" system.

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Decriminalising consensual relationships has taken an about turn in the Code. Staying in a live-in relationship for more than one month without submitting a statement could lead to imprisonment of up to three months and fine of up to ten thousand rupees. Moral policing and "outing" couples would violate their rights even if they are not convicted.

The harassment value of this provision far outstrips that of the notorious Section 377. Section 377 of the Indian Penal Code was first challenged in the Naz Foundation Case where the petitioner pointed out how it served as a "weapon for police abuse". It was pointed out that it allowed police to harass couples, or demand sexual favours and bribes. This is an imminent threat here too by threatening detention or filing of cases. Unfortunately, most young people are so unempowered and vulnerable that they cannot confront their parents openly, let alone the might of the state in the form of the registrar or the police. Instances of human rights violations of consenting couples may not come to light at all.

Cross-cultural couples are damned if they marry and damned if they don't. Couples in relationships outside marriage are often those who cannot marry due to parental or societal disapproval or threats from state or non-state actors if they try to marry by giving notice under the Special Marriage Act, 1954. They are also often young and concerned about privacy due to fear of reprisals and, especially in the case of young women, of being forced to marry someone else against their will. The Code infantilises young adults till age 21 and allows a patriarchal and paternalistic state and society to dictate what ought to be an intensely personal decision on whether their relationship should be private or public.

These provisions of the Code are a violation of intimate individual rights and a monstrous affront to our constitutional ideals and rights. They must be struck down immediately.

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The writer is professor of law, National Law School of India University, Bengaluru

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