



CENTRE FOR
RESEARCH IN
SOCIAL SCIENCES
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THE SOCIAL SCIENCE PERSPECTIVE

NEWSLETTER FROM THE CENTRE FOR RESEARCH
IN SOCIAL SCIENCES AND EDUCATION

VOLUME 4, ISSUE 2, April 2024

INDIA MATTERS

Equality Vs Privacy: Women's Rights in Conundrum in the Uniform Civil Code



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Uniformity, while desirable, may turn out to be a bane for individual rights, and women across religions can feel threatened with a uniform civil code. President Droupadi Murmu approved the Uniform Civil Code Uttarakhand Bill, 2024, under Article 201 of the Constitution of India on March 11, 2024, making Uttarakhand the first state in post-independent India to implement the Uniform Civil Code (UCC) Act. Prior to this, only Goa had UCC, implemented by the Portuguese in 1867. Officially it has been stated that when this UCC will play an important role in promoting harmony by proving the importance of social equality, as with it "alongside providing equal rights to all citizens, the oppression of women will also be curbed." However, when equality between communities takes precedence over equality amongst, individual women's rights often fall within the gap.

Uttarakhand, the 27th state of India, carved out of northern Uttar Pradesh in 2000, famous for its pilgrimage sites, has 82.97 per cent Hindus, 13.95 per cent Muslims, and 2.34 per cent Sikhs. Today it has a common law on marriage, divorce, land property and inheritance for all its citizens, irrespective of their religion, as promised by the Bhartiya Janta Party (BJP) ahead of the 2022 state assembly polls. An action of the State government ostensibly to protect the interests of the citizens and maintain the essential character of Uttarakhand, in accordance with the vision of the Prime Minister, Narendra Modi.

Mentioned in the Article 44 of the Directive Principles of State Policy, UCC resonates with 'one country one rule' and implies that all sections of the society irrespective of their religion shall be treated equally according to a uniformly applicable national civil code. Part 4, Article 44 of the Indian Constitution says, "The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India." This 750 page-draft Bill, with 7 schedules and 392 sections, had been reviewed by a five-member panel under Justice Ranjana Prakash Desai, former Supreme Court Judge before being passed by the Uttarakhand State Assembly on February 7, 2024.

The Bill awards equal rights in property to sons and daughters for all classes and adds that after the death of a person, his wife and children be given equal rights in his property along with the deceased's parents. It allows marriages to be solemnised only between a man and a woman, sets the age for the same at 21 years for boys and 18 years for girls, and makes it mandatory to register marriage and divorce, failing which the couple concerned will be deprived of the benefits of all government facilities. In case of divorce or domestic dispute between husband and wife, the custody of the child up to 5 years of age will remain with the mother. Besides, it makes no distinction between legitimate and illegitimate children, adopted children, children born through surrogacy and children born through assisted reproductive technology. It prescribes three years' imprisonment or a fine of ₹1 lakh if a person is found committing

halala. The problematic feature of this Bill is that it penalises the failure to register live-in relationships with imprisonment up to three months and a fine, not exceeding ₹25,000 or both, which criminalises and attempts to regulate constitutionally acceptable behaviours, like adult consenting cohabitation.

Criticisms

The Uttarakhand UCC has been criticised for being anti-Muslim particularly by Asaduddin Owaisi, president of All India Majlis-E-Ittehadul Muslimeen of being nothing but a “Hindu Code”. It has been criticised that this Bill simply targets Muslims who follow customary rules on polygamy and divorce under the Sharia law, which now stands banned. Jamiat Ulema-e-Hind, a leading Muslim body, said: “We cannot accept any law that is against the Sharia because a Muslim can compromise with anything but Sharia and religion.” Muslim critics have also questioned the government’s imposition of rules on Iddat, the cooling off period after the dissolution of marriage during which women cannot remarry, as required by the Sharia in Islam. The argument being that as Muslim women observe Iddat at home - those who want to do it, those who are religious, will still do it, and they don’t need a permit to observe it. So ostensibly, the UCC will not be able to interfere.

Opposing party MLAs have also criticised the fact that this Bill has been passed just a few months before general elections in the country and thereby of being a vote-garnering act, also the manner in which this Bill was apparently passed in the Assembly without a detailed discussion because of the ruling party’s majority in the House. It is alleged, as Mohammad Shahzad, BSP MLA from Laksar constituency, said that, “The whole process of bringing this Bill was flawed. They first invited suggestions and then drafted the Bill. However, they should have prepared a draft first and then invited suggestions”

Women’s rights activists and groups are of the opinion that instead of safeguarding them and granting them equal rights, this UCC is instead curbing their freedom, criminalising their actions and making them vulnerable to the scrutiny of vigilantes,

blackmail, threat from any state stakeholders. Any man and woman cohabiting together would become suspect of being in a live-in relationship that has not been official registered. It would become nightmarish with any and everybody prying into their private life! Thus, women’s rights activists have demanded that the Bill be referred to a Standing Committee or Select Committee for deliberations as when the Supreme Court has validated live-in relationships, how can the state overwrite it. It ends up reducing autonomy and choice for women and makes a hypocritical claim of enhancing their rights and freedoms.

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